94th Congress
2d Session

COMMITTEE PRINT

A LEGISLATIVE HISTORY OF THE ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT OF 1974

TOGETHER WITH

A SECTION-BY-SECTION INDEX

PREPARED BY THE

ENVIRONMENT AND NATURAL RESOURCES POLICY DIVISION

OF THE

CONGRESSIONAL RESEARCH SERVICE

OF THE

LIBRARY OF CONGRESS

FOR THE

COMMITTEE ON PUBLIC WORKS
U.S. SENATE

VOLUME 1

SEPTEMBER 1976

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U.S. GOVERNMENT PRINTING OFFICE
63–518 WASHINGTON : 1976

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LETTER OF TRANSMITTAL

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., June 25, 1976.

Hon. EDMUND S. MUSKIE,
Chairman, Subcommittee on Environmental Pollution, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request, we have prepared a legislative history of the Energy Supply and Environmental Coordination Act of 1974, Public Law 93-319.

This two volume document contains the major bills, reports, hearing testimony, and debates that marked the first efforts to amend the Clean Air Act Amendments of 1972 because of a critical energy supply situation. A section-by-section index is included which references discussions of provisions of ESECA.

The history should be of considerable aid to legislators, public officials, industries, and the general public who are involved with implementing and amending the Clean Air Act and who wish to understand Congressional intent in the passage of Public Law 93-319.

The author of this report was Connie A. Musgrove, Analyst, of the Environment and Natural Resources Policy Division.

We hope this document will serve your Committee's needs for a continuing updated history of the Clean Air Act.

Sincerely,

NORMAN BECKMAN,
Acting Director.

LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
Washington, D.C., June 25, 1976.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Public Works, U.S. Senate,
Washington, D.C.

DEAR JENNINGS: The enactment of the Energy Supply and Environmental Coordination Act of 1974 was a significant step forward in governmental policies designed to meet energy needs while maintaining our objective of improved air quality for the Nation. As Chairman of the Senate Committee on Public Works, you know the long and difficult deliberations that eventually produced this law. The Subcommittee on Environmental Pollution examined legislative proposals to amend the Clean Air Act that were contained in the emergency energy legislation of 1973 and early 1974. The coal conversion and allocation section and Title II, Coordination with Environmental Protection Requirements, were subsequently separated from the energy legislation in April 1974 after a Presidential veto of the latter and reintroduced as a separate bill H.R. 14368 and as the similar Senate substitute amendment No. 1303.

Many of the original documents detailing the complicated history of this legislation are now out of print. The publication of this report will make all of the necessary materials available in one comprehensive document. When these volumes are used with the earlier Senate Public Works Committee Print, A Legislative History of The Clean Air Act Amendments of 1970, we facilitate further public understanding of the Clean Air Act. To ensure that this document will be available to all who may have need to use it, I request that it be published as a Committee Print by the Committee on Public Works.

Sincerely,

EDMUND S. MUSKIE,
Chairman, Subcommittee on Environmental Pollution.

NOTES

This legislative history provides a compilation of the significant documents and debates leading up to the Energy Supply and Environmental Coordination Act of 1974, Public Law 93–319. These first substantive changes in the Clean Air Act Amendments of 1970 found their roots in the proposed Energy Emergency Act precipitated by the 1973 Arab oil embargo. After two conference reports and a Presidential veto, the Clean Air Act revisions were split from energy emergency legislation and passed in a separate bill.

The boldface section references inserted in the text refer to the section numbers of the bill under discussion except those provisions amending the Clean Air Act designated by CAA. If the provisions do not amend the Clean Air Act but are contained in Public Law 93–319, they are designated by ESECA.

CONNIE A. MUSGROVE,
Environment and Natural Resources Policy Division,
Congressional Research Service,
Library of Congress.

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Note: An identical contents appears in Volume 2. This volume (Volume 1) contains Chapters 1–8 only.

CHAPTER 1

The Clean Air Act, as Amended, Public Law 93–319, and the President's Approval

THE CLEAN AIR ACT

AS AMENDED, JUNE 1974

Revisions indicated by marginal brackets

TITLE I—AIR POLLUTION PREVENTION AND CONTROL [1]

FINDINGS AND PURPOSES

"SEC. 101. (a) The Congress finds—

"(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

"(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property and hazards to air and ground transportation;

"(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

"(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional and local programs to prevent and control air pollution.

"(b) The purposes of this title are—

"(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

"(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

"(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

"(4) to encourage and assist the development and operation of regional air pollution control programs.

COOPERATIVE ACTIVITIES AND UNIFORM LAWS

"SEC. 102. (a) The Administrator shall encourage cooperative activities by the States and local governments for the prevention

[1] Clean Air Act (42 U.S.C. 1857 et seq.) includes the Clean Air Act of 1963 (P.L. 88-206), and amendments made by the Motor Vehicle Air Pollution Control Act —P.L. 89-272 (October 20, 1965), the Clean Air Act Amendments of 1966—P.L. 89-675 (October 15, 1966), the Air Quality Act of 1967—P.L. 90-148 (November 21, 1967), the Clean Air Amendments of 1970—P.L. 91-604—(December 31, 1970), the Comprehensive Health Manpower Training Act of 1971—P.L. 92-157—(November 18, 1971), and the Energy Supply and Environmental Coordination Act of 1974—P.L. 93-319—(June 22, 1974).

Marginal brackets indicate revisions.

and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

"(b) The Administrator shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

"(c) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after the date of enactment of the Air Quality Act of 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

RESEARCH, INVESTIGATION, TRAINING, AND OTHER ACTIVITIES

"SEC. 103. (a) The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

"(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution;

"(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

"(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located;

"(4) establish technical advisory committees composed of

recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research.

"(b) In carrying out the provisions of the preceding subsection the Administrator is authorized to—

"(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

"(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

"(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a) (1) of this section;

"(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5);

"(5) provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications;

"(6) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

"(7) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof; and

"(8) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution.

"(c) In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on the harmful effects on the health or welfare of persons by the various known air pollutants.

"(d) The Administrator is authorized to construct such facilities and staff and equip them as he determines to be necessary to carry out his functions under this Act.

"(e) If, in the judgment of the Administrator, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, he may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are

occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Administrator. If . . . the Administrator finds, on the basis of evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under section 115, he shall send such findings, together with recommendations concerning the measures which he finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (b), (c), (d), (e), and (f) of section 115.

"(f) (1) In carrying out research pursuant to this Act, the Administrator shall give special emphasis to research on the short- and long-term effects of air pollutants on public health and welfare. In the furtherance of such research, he shall conduct an accelerated research program—

"(A) to improve knowledge of the contribution of air pollutants to the occurrence of adverse effects on health, including, but not limited to, behavioral, physiological, toxicological, and biochemical effects; and

"(B) to improve knowledge of the short- and long-term effects of air pollutants on welfare.

"(2) In carrying out the provisions of this subsection the Administrator may—

"(A) conduct epidemiological studies of the effects of air pollutants on mortality and morbidity;

"(B) conduct clinical and laboratory studies on the immunologic, biochemical, physiological, and the toxicological effects including carcinogenic, teratogenic, and mutagenic effects of air pollutants;

"(C) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers;

"(D) utilize the authority contained in paragraphs (1) through (4) of subsection (b); and

"(E) consult with other appropriate Federal agencies to assure that research or studies conducted pursuant to this subsection will be coordinated with research and studies of such other Federal agencies.

"(3) In entering into contracts under this subsection, the Administrator is authorized to contract for a term not to exceed 10 years in duration. For the purposes of this paragraph, there are authorized to be appropriated $15,000,000. Such amounts as

are appropriated shall remain available until expended and shall be in addition to any other appropriations under this Act."

RESEARCH RELATING TO FUELS AND VEHICLES

"SEC. 104. (a) The Administrator shall give special emphasis to research and development into new and improved methods, having industry-wide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall—

"(1) conduct and accelerate research programs directed toward development of improved, low-cost techniques for—

"(A) control of combustion byproducts of fuels,

"(B) removal of potential air pollutants from fuels prior to combustion,

"(D) control of emissions from the evaporation of fuels,

"(D) improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and

"(E) producing synthetic or new fuels which, when used, result in decreased atmospheric emissions."

"(2) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industry-wide application of preventing or controlling discharges into the air of various types of pollutants; (B) part of the cost of programs to develop low emission alternatives to the present internal combustion engine; (C) the cost to purchase vehicles and vehicle engines, or portions thereof, for research, development, and testing purposes; and (D) carrying out the other provisions of this section, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5): *Provided*, That research or demonstration contracts awarded pursuant to this subsection or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 of title 10, United States Code, except that the determination, approval, and certification required thereby shall be made by the Administrator: *Provided further*, That no grant may be made under this paragraph in excess of $1,500,000;

"(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the

point where they can be demonstrated on a large and practical scale;

"(4) construct, operate, and maintain, or assist in meeting the cost of the construction, operation, and maintenance of new or improved demonstration plants or processes which have promise of accomplishing the purposes of this Act;

"(5) study new or improved methods for the recovery and marketing of commercially valuable byproducts resulting from the removal of pollutants.

"(b) In carrying out the provisions of this section, the Administrator may—

"(1) conduct and accelerate research and development of low-cost instrumentation techniques to facilitate determination of quantity and quality of air pollutant emissions, including, but not limited to, automotive emissions;

"(2) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories;

"(3) establish and operate necessary facilities and test sites at which to carry on the research, testing, development, and programming necessary to effectuate the purposes of this section;

"(4) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and an interest in lands, plants, and facilities, and other property or rights by purchase, license, lease, or donation; and

"(5) cause on-site inspections to be made of promising domestic and foreign projects, and cooperate and participate in their development in instances in which the purposes of the Act will be served thereby.

"(c) For the purposes of this section there are authorized to be appropriated $75,000,000 for the fiscal year ending June 30, 1971, $125,000,000 for fiscal year ending June 30, 1972, $150,000,000 for fiscal year ending June 30, 1973, $150,000,000 for fiscal year ending June 30, 1974, and $150,000,000 for fiscal year ending June 30, 1975. Amounts appropriated pursuant to this subsection shall remain available until expended.

GRANTS FOR SUPPORT OF AIR POLLUTION PLANNING AND CONTROL PROGRAMS

"SEC. 105. (a) (1) (A) The Administrator may make grants to air pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and up to one-half of the cost of maintaining programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

"(B) Subject to subparagraph (C), the Administrator may make grants to air pollution control agencies within the meaning of paragraph (1), (2), or (4) of section 302(b) in an amount up to three-fourths of the cost of planning, developing, establishing, or improving, and up to three-fifths of the cost of maintaining any program for the prevention and control of air pollution or implementation of national primary and secondary ambient

air quality standards in an area that includes two or more municipalities, whether in the same or different States.

"(C) With respect to any air quality control region or portion thereof for which there is an applicable implementation plan under section 110, grants under subparagraph (B) may be made only to air pollution control agencies which have substantial responsibilities for carrying out such applicable implementation plan.

"(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 302 (b) (2) and 302(b) (4) the Administrator shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

"(3) Before approving any planning grant under this subsection to any air pollution control agency within the meaning of sections 302(b) (2) and 302(b) (4), the Administrator shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

"(b) from the sums available for the purposes of subsection (a) of this section for any fiscal year, the Administrator shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Administrator may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Administrator shall, so far as practicable, give due consideration to (1) the population, (2) the extent of the actual or potential air pollution problem, and (3) the financial need of the respective agencies. No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

"(c) Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Administrator shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends.

"(d) The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 301 of this Act, when such detail is for the convenience of, and at the request of such recipient and for the purpose of carrying out the provisions of this Act. The amount by which such payments have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency.

INTERSTATE AIR QUALITY AGENCIES OR COMMISSIONS

"SEC. 106. For the purpose of developing implementation plans for any interstate air quality control region designated pursuant to section 107, the Administrator is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors, plans for implementation of national primary and secondary ambient air quality standards and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period, the Administrator is authorized to make grants to such agency in an amount up to three-fourths of the air quality planning program costs of such agency.

AIR QUALITY CONTROL REGIONS

"SEC. 107. (a) Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

"(b) For purposes of developing and carrying out implementation plans under section 110—

"(1) an air quality control region designated under this section before the date of enactment of the Clean Air Amendments of 1970, or a region designated after such date under subsection (c), shall be an air quality control region; and

"(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but

such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

"(c) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the Governors of the affected States of any designation made under this subsection.

AIR QUALITY CRITERIA AND CONTROL TECHNIQUES

"SEC. 108. (a)(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after the date of enactment of the Clean Air Amendments of 1970 publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

"(A) which in his judgment has an adverse effect on public health and welfare;

"(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

"(C) for which air quality criteria had not been issued before the date of enactment of the Clean Air Amendments of 1970, but for which he plans to issue air quality criteria under this section.

"(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

"(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

"(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

"(C) any known or anticipated adverse effects on welfare.

"(b)(1) Simultaneously with the issuance of criteria under subsection (a), the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies, information on air pollution control techniques, which information shall include data relating to the technology and costs of emission control. Such information shall include such data as are available on available technology and alternative methods of

prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination of significant reduction of emissions.

"(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a) (1), which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit as appropriate, to the Administrator, information related to that required in paragraph (1).

"(c) The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section.

"(d) The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.

NATIONAL AMBIENT AIR QUALITY STANDARDS

"SEC. 109. (a) (1) The Administrator

"(A) within 30 days after the date of enactment of the Clean Air Amendments of 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date of enactment; and

"(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

"(2) With respect to any air pollutant for which air quality criteria are issued after the date of enactment of the Clean Air Amendments of 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1) (B) of this subsection shall apply to the promulgation of such standards.

"(b) (1) National primary ambient air quality standards, prescribed under subsection (a) shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

"(2) Any national secondary ambient air quality standard prescribed, under subsection (a) shall specify a level of air quality the attainment and maintenance of which in the judgment of the

Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

IMPLEMENTATION PLANS

"SEC. 110. (a) (1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 for any air pollutant, a plan which provides for implementation, maintenance and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

"(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan for each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

"(A) (i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e)) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and, (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

"(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transportation controls;

"(C) it includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

"(D) it includes a procedure, meeting the requirements of paragraph (4), for review (prior to construction or modifica-

tion) of the location of new sources to which a standard of performance will apply;

"(E) it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region;

"(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan; (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources; (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection; and (v) for authority comparable to that in section 303, and adequate contingency plans to implement such authority;

"(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards; and

"(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standard; or (ii) whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements.

"(3)(A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

"(B) As soon as practicable, the Administrator shall, consistent with the purposes of this Act and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates

only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

"(4) The procedure referred to in paragraph (2) (D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate authority to prevent the construction or modification of any new source to which a standard of performance under Section 111 will apply at any location which the State determines will prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necessary to permit the State to make a determination under clause (A).

"(b) The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed eighteen months from the date otherwise required for submission of such plan.

"(c) (1) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

"(A) The State fails to submit an implementation plan for any national ambient air quality primary or secondary standard within the time prescribed,

"(B) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

"(C) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a) (2) (H).

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

"(2) (A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than three months after date of enactment of this paragraph on the necessity of parking surcharge, management of parking

supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.

"(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

"(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

"(D) For purposes of this paragraph—

"(i) The term 'parking surcharge regulation' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

"(ii) The term 'management of parking supply' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

"(iii) The term 'preferential bus/carpool lane' shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

"(E) No standard, plan, or requirement, relating to manage-

ment of parking supply or preferential bus/carpool lanes shall be promulgated after the date of enactment of this paragraph by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

"(d) For purposes of this Act, an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved under subsection (a) or promulgated under subsection (c) and which implements a national primary or secondary ambient air quality standard in a State.

"(e) (1) Upon application of a Governor of a State at the time of submission of any plan implementing a national ambient air quality primary standard, the Administrator may (subject to paragraph (2)) extend the three-year period referred to in subsection (a) (2) (A) (i) for not more than two years for an air quality control region if after review of such plan the Administrator determines that—

"(A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period, and

"(B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

"(2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—

"(A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1) (A) within the three-year period, and

"(B) such interim measures of control of the sources (or classes) described in paragraph (1) (A) as the Administrator determines to be reasonable under the circumstances.

"(f) (1) Prior to the date on which any stationary source or class of moving sources is required to comply with any requirement of an applicable implementation plan the Governor of the State to which such plan applies may apply to the Administrator to postpone the applicability of such requirement to such source (or class) for not more than one year. If the Administrator determines that—

"(A) good faith efforts have been made to comply with such requirement before such date,

"(B) such source (or class) is unable to comply with such requirement because the necessary technology or other alternative methods of control are not available or have not been

available for a sufficient period of time,

"(C) any available alternative operating procedures and interim control measures have reduced or will reduce the impact of such source on public health, and

"(D) the continued operation of such source is essential to national security or to the public health or welfare,

then the Administrator shall grant a postponement of such requirement.

"(2) (A) Any determination under paragraph (1) shall (i) be made on the record after notice to interested persons and opportunity for hearing, (ii) be based upon a fair evaluation of the entire record at such hearing, and (iii) include a statement setting forth in detail the findings and conclusions upon which the determination is based.

"(B) Any determination made pursuant to this paragraph shall be subject to judicial review by the United States Court of Appeals for the circuit which includes such State upon the filing in such court within 30 days from the date of such decision of a petition by any interested person praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Administrator and thereupon the Administrator shall certify and file in such court the record upon which the final decision complained of was issued, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm or set aside the determination complained of in whole or in part. The findings of the Administrator with respect to questions of fact (including each determination made under subparagraphs (A), (B), (C), and (D) of paragraph (1)) shall be sustained if based upon a fair evaluation of the entire record at such hearing.

"(C) Proceedings before the court under this paragraph shall take precedence over all the other causes of action on the docket and shall be assigned for hearing and decision at the earliest practicable date and expedited in every way.

"(D) Section 307 (a) (relating to subpenas) shall be applicable to any proceeding under this subsection.

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

"SEC. 111. (a) For purposes of this section:

"(1) The term 'standard of performance' means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated.

"(2) The term 'new source' means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

"(3) The term 'stationary source' means any building, structure, facility, or installation which emits or may emit any air pollutant.

"(4) The term 'modification' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

"(5) The term 'owner or operator' means any person who owns, leases, operates, controls, or supervises a stationary source.

"(6) The term 'existing source' means any stationary source other than a new source.

"(b) (1) (A) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare.

"(B) Within 120 days after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within 90 days after such publication, such standards with such modifications as he deems appropriate. The Administrator may, from time to time, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance or revisions thereof shall become effective upon promulgation.

"(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

"(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

"(4) The provisions of this section shall apply to any new source owned or operated by the United States.

"(c) (1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this Act to implement and enforce such standards (except with respect to new sources owned or operated by the United States).

"(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

"(d) (1) The Administrator shall prescribe regulations which

shall establish a procedure similar to that provided by section 110 under which each State shall submit to the Administrator a plan which (A) establishes emission standards for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 108(a) or 112(b) (1) (A) but (ii) to which a standard of performance under subsection (b) would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such emission standards.

"(2) The Administrator shall have the same authority—

"(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 110(c) in the case of failure to submit an implementation plan, and

"(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 113 and 114 with respect to an implementation plan.

"(e) After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

"SEC. 112. (a) For purposes of this section—

"(1) The term 'hazardous air pollutant' means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

"(2) The term 'new source' means a stationary source the construction or modification of which is commenced after the Administrator proposes regulations under this section establishing an emission standard which will be applicable to such source.

"(3) The terms 'stationary source,' 'modification,' 'owner or operator' and 'existing source' shall have the same meaning as such terms have under section 111(a).

"(b) (1) (A) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970, publish (and shall from time to time thereafter revise) a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section.

"(B) Within 180 days after the inclusion of any air pollutant in such list, the Administrator shall publish proposed regulations establishing emission standards for such pollutant together with a notice of a public hearing within thirty days. Not later than 180 days after such publication, the Administrator shall prescribe an emission standard for such pollutant, unless he finds, on the basis of information presented at such hearings, that such pollutant clearly is not a hazardous air pollutant. The Administrator shall

establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutants.

"(C) Any emission standard established pursuant to this section shall become effective upon promulgation.

"(2) The Administrator shall, from time to time, issue information on pollution control techniques for air pollutants subject to the provisions of this section.

"(c) (1) After the effective date of any emission standard under this section—

"(A) no person may construct any new source or modify any existing source which, in the Administrator's judgment, will emit an air pollutant to which such standard applies unless the Administrator finds that such source if properly operated will not cause emissions in violation of such standard, and

"(B) no air pollutant to which such standard applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

"(i) such standard shall not apply until 90 days after its effective date, and

"(ii) the Administrator may grant a waiver permitting such source a period of up to two years after the effective date of a standard to comply with the standard, if he finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

"(2) The President may exempt any stationary source from compliance with paragraph (1) for a period of not more than two years if he finds that the technology to implement such standards is not available and the operation of such source is required for reasons of national security. An exemption under this paragraph may be extended for one or more additional periods, each period not to exceed two years. The President shall make a report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

"(d) (1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing *emission standards for hazardous air pollutants* for stationary sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this Act to implement and enforce such standards (except with respect to stationary sources owned or operated by the United States).

"(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable *emission* standard under this section.

FEDERAL ENFORCEMENT

"SEC. 113. (a) (1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b).

"(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as 'period of Federally assumed enforcement') the Administrator may enforce any requirement of such plan with respect to any person—

"(A) by issuing an order to comply with such requirement, or

"(B) by bringing a civil action under subsection (b).

"(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 111 (e) (relating to new source performance standards), 112(c) (relating to standards for hazardous emissions), or 119(g) (relating to energy-related authorities), or is in violation of any requirement of section 114 (relating to inspections, etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b).

"(4) An order issued under this subsection (other than an order relating to a violation of section 112) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

"(b) The Administrator may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person—

"(1) violates or fails or refuses to comply with any order issued under subsection (a) ; or

"(2) violates any requirement of an applicable implementation plan (A) during any period of Federally assumed enforcement, or (B) more than 30 days after having been notified by the Administrator under subsection (a)(1) of a finding that such person is violating such requirement; or

"(3) violates section 111(e), 112(c), or 119(g) ; or

"(4) fails or refuses to comply with any requirement of section 114.

Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency.

"(c) (1) Any person who knowingly—

"(A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, or (ii) more than 30 days after having been notified by the Administrator under subsection (a)(1) that such person is violating such requirement, or

"(B) violates or fails or refuses to comply with any order issued by the Administrator under subsection (a), or

"(C) violates section 111(e), section 112(c), or section 119(g) shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

"(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

INSPECTIONS, MONITORING, AND ENTRY

"SEC. 114. (a) For the purpose (i) of developing or assisting in the development of any implementation plan under section 110 or 111(d), any standard of performance under section 111, or any emission standard under section 112,(ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out section 119 or 303—

"(1) the Administrator may require the owner or operator of any emission source to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information, as he may reasonably require; and

"(2) the Administrator or his authorized representative, upon presentation of his credentials—

"(A) shall have a right of entry to, upon, or through any premises in which an emission source is located or in which any records required to be maintained under paragraph (1) of this section are located, and

"(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which the owner or operator of such source is required to sample under paragraph (1).

"(b) (1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section (except with respect to new sources owned or operated by the United States).

"(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

"(c) Any records, reports or information obtained under subsection (a) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

ABATEMENT BY MEANS OF CONFERENCE PROCEDURE IN CERTAIN CASES

"SEC. 115. (a) The pollution of the air in any State or States which endangers the health or welfare of any persons and which is covered by subsection (b) or (c) shall be subject to abatement as provided in this section.

"(b) (1) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the

Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Administrator shall, if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

"(2) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Administrator shall, if such request refers to alleged air pollution which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate and if a municipality affected by such air pollution, or the municipality in which such pollution originates, has either made or concurred in such request, give formal notification thereof to the State air pollution control agency, to the air pollution control agencies of the municipality where such discharge or discharges originate, and of the municipality or municipalities alleged to be adversely affected thereby, and to any interstate air pollution control agency, whose jurisdictional area includes any such municipality and shall promptly call a conference of such agency or agencies, unless in the judgment of the Administrator, the effect of such pollution is not of such significance as to warrant exercise of Federal jurisdiction under this section.

"(3) The Administrator may, after consultation with State officials of all affected States, also call such a conference whenever, on the basis of reports, surveys, or studies, he has reason to believe that any pollution referred to in subsection (a) is occurring and is endangering the health and welfare of persons in a State other than that in which the discharge or discharges originate. The Administrator shall invite the cooperation of any municipal, State, or interstate air pollution control agencies having jurisdiction in the affected area on any surveys or studies forming the basis of conference action.

"(4) A conference may not be called under this subsection with respect to an air pollutant for which (at the time the conference is called) a national primary or secondary ambient air quality standard is in effect under section 109.

"(c) Whenever the Administrator, upon receipt of reports, surveys, or studies from any duly constituted international agency,

has reason to believe that any pollution referred to in subsection (a) which endangers the health or welfare of persons in a foreign country is occurring, or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in the jurisdictional area of which such municipality is located, and shall call promptly a conference of such agency or agencies. The Administrator shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the conference, and the representative of such country shall, for the purpose of the conference and any further proceeding resulting from such conference, have all the rights of a State air pollution control agency. This subsection shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this subsection.

"(d) (1) The agencies called to attend any conference under this section may bring such persons as they desire to the conference. The Administrator shall deliver to such agencies and make available to other interested parties, at least thirty days prior to any such conference, a Federal report with respect to the matters before the conference, including data and conclusions or findings (if any) ; and shall give at least thirty days' prior notice of the conference date to any such agency, and to the public by publication on at least three different days in a newspaper or newspapers of general circulation in the area. The chairman of the conference shall give interested parties an opportunity to present their views to the conference with respect to such Federal report, conclusions or findings (if any), and other pertinent information. The Administrator shall provide that a transcript be maintained of the proceedings of the conference and that a copy of such transcript be made available on request of any participant in the conference at the expense of such participant.

"(2) Following this conference, the Administrator shall prepare and forward to all air pollution control agencies attending the conference a summary of conference discussions including (A) occurrence of air pollution subject to abatement under this Act; (B) adequacy of measures taken toward abatement of the pollution; and (C) nature of delays, if any, being encountered in abating the pollution.

"(e) If the Administrator believes, upon the conclusion of the conference or thereafter, that effective progress toward abatement of such pollution is not being made and that the health or welfare of any persons is being endangered, he shall recommend to the appropriate State, interstate, or municipal air pollution control agency (or to all such agencies) that the necessary remedial action be taken. The Administrator shall allow at least six months

from the date he makes such recommendations for the taking of such recommended action.

"(f) (1) If, at the conclusion of the period so allowed, such remedial action or other action which in the judgment of the Administrator is reasonably calculated to secure abatement of such pollution has not been taken, the Administrator shall call a public hearing, to be held in or near one or more of the places where the discharge or discharges causing or contributing to such pollution originated, before a hearing board of five or more persons appointed by the Administrator. Each State in which any discharge causing or contributing to such pollution originates and each State claiming to be adversely affected by such pollution shall be given an opportunity to select one member of such hearing board and each Federal department, agency, or instrumentality having a substantial interest in the subject matter as determined by the Administrator shall be given an opportunity to select one member of such hearing board, and one member shall be a representative of the appropriate interstate air pollution agency if one exists, and not less than a majority of such hearing board shall be persons other than officers or employees of the Environmental Protection Agency. At least three weeks' prior notice of such hearing shall be given to the State, interstate, and municipal air pollution control agencies called to attend such hearing and to the alleged polluter or polluters. All interested parties shall be given a reasonable opportunity to present evidence to such hearing board.

"(2) On the basis of evidence presented at such hearing, the hearing board shall make findings as to whether pollution referred to in subsection (a) is occurring and whether effective progress toward abatement thereof is being made. If the hearing board finds such pollution is occurring and effective progress toward abatement thereof is not being made it shall make recommendations to the Administrator concerning the measures, if any, which it finds to be reasonable and suitable to secure abatement of such pollution.

"(3) The Administrator shall send such findings and recommendations to the person or persons discharging any matter causing or contributing to such pollution; to air pollution control agencies of the State or States and of the municipality or municipalities where such discharge or discharges originate; and to any interstate air pollution control agency whose jurisdictional area includes any such municipality, together with a notice specifying a reasonable time (not less than six months) to secure abatement of such pollution.

"(g) If action reasonably calculated to secure abatement of the pollution within the time specified in the notice following the public hearing is not taken the Administrator—

> "(1) in the case of pollution of air which is endangering the health or welfare of persons (A) in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, or (B) in a foreign country which has participated in a conference called under subsection (c) of this section and in all proceedings under this

section resulting from such conference, may request the Attorney General to bring a suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution;

"(2) in the case of pollution of air which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate, at the request of the Governor of such State, shall provide such technical and other assistance as in his judgment is necessary to assist the State in judicial proceedings to secure abatement of the pollution under State or local law or, at the request of the Governor of such State, shall request the Attorney General to bring suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

"(h) The court shall receive in evidence in any suit brought in a United States court under subsection (g) of this section a transcript of the proceedings before the board and a copy of the board's recommendations and shall receive such further evidence as the court in its discretion deems proper. The court, giving due consideration to the practicability of complying with such standards as may be applicable and to the physical and economic feasibility of securing abatement of any pollution proved, shall have jurisdiction to enter such judgment, and orders enforcing such judgment, as the public interest and the equities of the case may require.

"(i) Members of any hearing board appointed pursuant to subsection (f) who are not regular full-time officers or employees of the United States shall, while participating in the hearing conducted by such board or otherwise engaged on the work of such board, be entitled to receive compensation at a rate fixed by the Administration, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b–2) for persons in the Government service employed intermittently.

"(j) (1) In connection with any conference called under this section, the Administrator is authorized to require any person whose activities result in the emission of air pollutants causing or contributing to air pollution to file with him, in such form as he may prescribe, a report, based on existing data, furnishing to the Administrator such information as may reasonably be required as to the character, kind, and quantity of pollutants discharged and the use of devices or other means to prevent or reduce the emission of pollutants by the person filing such a report. After a conference has been held with respect to any such pollution the Administrator shall require such reports from the person whose activities result in such pollution only to the extent recommended by such conference. Such report shall be made under oath or otherwise, as the Administrator may prescribe, and shall be filed with the Administrator within such reasonable period as the Administrator may prescribe, unless additional time be granted by

the Administrator. No person shall be required in such report to divulge trade secrets or secret processes and all information reported shall be considered confidential for the purposes of section 1905 of title 18 of the United States Code.

"(2) If any person required to file any report under this subsection shall fail to do so within the time fixed by the Administrator for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where such person has his principal office or in any district in which he does business: *Provided,* that the Administrator may upon application therefore remit or mitigate any forfeiture provided for under this subsection and he shall have authority to determine the facts upon all such applications.

"(3) It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures.

"(k) No order or judgment under this section, or settlement, compromise, or agreement respecting any action under this section (whether or not entered or made before the date of enactment of the Clean Air Amendments of 1970) shall relieve any person of any obligation to comply with any requirement of an applicable implementation plan, or with any standard prescribed under section 111 or 112.

RETENTION OF STATE AUTHORITY

"SEC. 116. Except as otherwise provided in sections 119(c), (e), and (f), 209, 211(c)(4), and 233 (preempting certain State regulation of moving sources) nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 111 or 112, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

PRESIDENT'S AIR QUALITY ADVISORY BOARD AND ADVISORY COMMITTEES

"SEC. 117. (a)(1) There is hereby established in the Environmental Protection Agency an Air Quality Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and fifteen members appointed by the President, none of whom shall be Federal officers or employees. The appointed

members, having due regard for the purposes of this Act, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with air pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of air pollution prevention and control, as well as other individuals who are expert in this field.

"(2) Each member appointed by the President shall hold office for a term of three years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (B) the terms of office of the members first taking office pursuant to this subsection shall expire as follows: five at the end of one year after the date of appointment, five at the end of two years after such date, and five at the end of three years after such date, as designated by the President at the time of appointment, and (C) the term of any member under the preceding provisions shall be extended until the date on which his successor's appointment is effective. None of the members shall be eligible for reappointment within one year after the end of his preceding term, unless such term was for less than three years.

"(b) The Board shall advise and consult with the Administrator on matters of policy relating to the activities and functions of the Administrator under this Act and make such recommendations as it deems necessary to the President.

"(c) Such clerical and technical assistance as may be necessary to discharge the duties of the Board and such other advisory committees as hereinafter authorized shall be provided from the personnel of the Environmental Protection Agency.

"(d) In order to obtain assistance in the development and implementation of the purposes of this Act, including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Administrator shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics, or technology.

"(e) The members of the Board and other advisory committees appointed pursuant to this Act who are not officers or employees of the United States while attending conferences or meetings of the Board or while otherwise serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of

title 5 of the United States Code for persons in the Government service employed intermittently.

"(f) Prior to—

"(1) issuing criteria for an air pollutant under section 108(a)(2),

"(2) publishing any list under section 111(b)(1)(A) or 112(b)(1)(A),

"(3) publishing any standard under section 111(b)(1)(B) or section 112(b)(1)(B), or

"(4) publishing any regulation under section 202(a),

the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independent experts, and Federal departments and agencies.

CONTROL OF POLLUTION FROM FEDERAL FACILITIES

"SEC. 118. Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements. The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 111, and an exemption from section 112 may be granted only in accordance with section 112(c). No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

ENERGY-RELATED AUTHORITY

"Sec. 119(a) For purposes of this section:

"(1) The term 'stationary source fuel or emission limitation' means any emission limitation, schedule or timetable of compliance, or other requirement, which is prescribed under this Act (other than this section, or section 111(b), 112, or 303) or contained in an applicable implementation plan (other than a requirement imposed under authority described in section 110(a)(2)(F)(v)), and which limits, or

is designed to limit, stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic.

"(2) The term 'air pollution requirement' means any emission limitation, schedule or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including this Act (except for any requirement prescribed under subsection (c) or (d) of this section, section 110(a)(2)(F)(v), or section 303), and which limits stationary source emissions resulting from combustion of fuels (including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic).

"(3) The terms 'stationary source' and 'source' have the same meaning as the term 'stationary source' has under section 111(a)(3); except that such terms include any owner or operator (as defined in section 111(a)(5)) of such source.

"(4) The term 'coal' includes coal derivatives.

"(5) The term 'primary standard condition' means a limitation, requirement, or other measure, prescribed by the Administrator under subsection (d)(2)(A) of this section.

"(6) The term 'regional limitation' means the requirement of subsection (c)(2)(D) of this section.

"(b)(1)(A) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before June 30, 1975, temporarily suspend an stationary source fuel or emission limitation as it applies to any person—

"(i) if the Administrator finds that such person will be unable to comply with any such limitation during such period solely because of unavailability of types or amounts of fuels (unless such unavailability results from an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974), or

"(ii) if such person is a source which is described in subsection (c)(1)(A) or (B) of this section and which has converted to coal, and the Administrator finds that the source will be able to comply during the period of the suspension with all primary standard conditions which will be applicable to such source.

Any suspension under this paragraph, the imposition of any interim requirement on which suspension is conditioned under paragraph (3) of this subsection, and the imposition of any primary standard condition which relates to such suspension, shall be exempted from any procedural requirements set forth in this Act or in any other provision of Federal, State, or local law; except as provided in subparagraph (B) of this paragraph.

"(B) The Administrator shall give notice to the public and afford interested persons an opportunity for written and oral presentations of data, views, and arguments prior to issuing a suspension under subparagraph (A), or denying an application for

such a suspension, unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In any case, before issuing such a suspension, he shall give actual notice to the Governor of the State in which the affected source or sources are located, and to appropriate local governmental officials (as determined by the Administrator). The issuing or denial of such a suspension, the imposition of an interim requirement, and the imposition of any primary standard condition shall be subject to judicial review only on the grounds specified in paragraph (2)(B), (2)(C), or (2)(D), of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304(a)(2) or 307(b) and (c) of this Act.

"(2) In issuing any suspension under paragraph (1), the Administrator is authorized to act on his own motion or upon application by any person (including a public officer or public agency).

"(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the persons receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and (C) in the case of a suspension under paragraph (1)(A)(i), requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available (as determined by the Administrator) to such person.

"(c)(1) Except as provided in paragraph (2) of this subsection, the Administrator shall issue a compliance date extension to any fuel-burning stationary source—

"(A) which is prohibited from using petroleum products or natural gas by reason of an order which is in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or

"(B) which the Administrator determines began conversion to the use of coal as its primary energy source during the period beginning on September 15, 1973, and ending on March 15, 1974,

and which, on or after September 15, 1973, converts to the use of coal as its primary energy source. If a compliance date extension is issued to a source, such source shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source, except as provided in subsection (d)(3). For purposes of this paragraph, the term 'began conversion' means action by the source during the period beginning on September 15, 1973, and ending on March 15, 1974 (such as entering into a contract binding on such source for obtaining coal, or equipment or facilities to burn coal; or applying for an air pollution variance

to enable such source to burn coal) which the Administrator finds evidences a decision (made prior to March 15, 1974) to convert to burning coal as a result of the unavailability of an adequate supply of fuels required for compliance with the applicable implementation plan, and a good faith effort to expeditiously carry out such decision.

"(2)(A) A compliance date extension under paragraph (1) of this subsection may be issued to a source only if—

(i) the Administrator finds that such source will not be able to burn coal which is available to such source in compliance with all applicable air pollution requirements without a compliance date extension,

(ii) the Administrator finds that the source will be able during the period of the compliance date extension to comply with all the primary standard conditions which are required under subsection (d)(2) to be applicable to such source, and with the regional limitation if applicable to such source, and

(iii) the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved.

A plan submitted under clause (iii) of the preceding sentence shall be approved only if it meets the requirements of regulations prescribed under subparagraph (B). The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

"(B) Not later than 90 days after the date of enactment of this section, the Administrator shall prescribe regulations requiring that any source to which a compliance date extension applies submit and obtain approval of its means for and schedule of compliance with the requirements of subparagraph (C) of this paragraph. Such regulations shall include requirements that such schedules shall include dates by which any such source must—

"(i) enter into contracts (or other obligations enforceable against such source) which the Administrator has approved as being adequate to provide for obtaining a long-term supply of coal which enables such source to achieve the emission reduction required by subparagraph (C), or

(ii) if coal which enables such source to achieve such emission reduction is not available to such source, enter into contracts (or other obligations enforceable against such source) which the Administrator has approved as being adequate to provide for obtaining (I) a long-term supply of other coal, and (II) continuous emission reduction systems necessary to permit such source to burn such coal and to achieve the degree of emission reduction required by subparagraph (C).

Regulations under this subparagraph shall provide that contracts or other obligations required to be approved under this subparagraph must be approved before they are entered into (except that a contract or obligation which was entered into before

the date of enactment of this section may be approved after such date).

"(C) Regulations under subparagraph (B) shall require that the source achieve the most stringent degree of emission reduction that such source would have been required to achieve under the applicable implementation plan which was in effect on the date of submittal (under subparagraph (B) of this paragraph) of the means for and schedule of compliance (or if no applicable implementation plan was in effect on such date, under the first applicable implementation plan which takes effect after such date). Such degree of emission reduction shall be achieved as soon as practicable, but not later than December 31, 1978; except that, in the case of a source for which a continuous emission reduction system is required for sulfur-related emissions, reduction of such emissions shall be achieved on a date designated by the Administrator (but not later than January 1, 1979). Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable, including requirements described in subparagraphs (A) and (B) of subsection (b)(3) and requirements to file progress reports.

"(D) A source which is issued a compliance date extension under this subsection, and which is located in an air quality control region in which a national primary ambient air quality standard for an air pollutant is not being met, may not emit such pollutant in amounts which exceed any emission limitation (and may not violate any other requirement) which applies to such source, under the applicable implementation plan for such pollutant. For purposes of this subparagraph, applicability of any such limitation or requirement to a source shall be determined without regard to this subsection or subsection (b).

"(3) A source to which this subsection applies may, upon the expiration of a compliance date extension, receive a one-year postponement of the application of any requirement of an applicable implementation plan under the conditions and in the manner provided in section 110(f).

"(4) The Administrator shall give notice to the public and afford an opportunity for oral and written presentations of data, views, and arguments before issuing any compliance date extension, prescribing any regulation under paragraph (2) of this subsection, making any finding under paragraph (2)(A) of this subsection, imposing any requirement on a source pursuant to paragraph (2) or any regulation thereunder, prescribing a primary standard condition under subsection (d)(2) which applies to a source to which an extension is issued under this subsection, or acting on any petition under subsection (d)(2)(C).

"(d)(1)(A) Whenever the Federal Energy Administrator issues an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 which will not apply after June 30, 1975, the Administrator of the Environmental Protection Agency shall certify to him—

"(i) in the case of a source to which no suspension will be issued under subsection (b), the earliest date on which

such source will be able to burn coal and to comply with all applicable air pollution requirements, or

"(ii) in the case of a source to which a suspension will be issued under subsection (b) of this section, the date determined under paragraph (2)(B) of this subsection.

"(B) Whenever the Federal Energy Administrator issues an order under section 2(a) of such Act which will apply after June 30, 1975, the Administrator of the Environmental Protection Agency shall notify him if such source will be able, on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under subsection (c). If such notification is not given—

"(i) in the case of a source which is eligible for a compliance date extension under subsection (c), the Administrator of the Environmental Protection Agency shall certify to the Federal Energy Administrator the date determined under paragraph (2)(B) of this subsection, and

"(ii) in the case of a source which is not eligible for such an extension, the Administrator of the Environmental Protection Agency shall certify to the Federal Energy Administrator the earliest date on which the source will be able to burn coal and to comply with all applicable air pollution requirements.

"(2)(A) The Administrator of the Environmental Protection Agency, after consultation with appropriate States, shall prescribe (and may from time to time, after such consultation, modify) emission limitations, requirements respecting pollution characteristics of coal, or other enforceable measures for control of emissions, for each source to which a suspension under subsection (b)(1)(A)(ii) will apply, and for each source to which a compliance date extension under subsection (c)(1) will apply. Such limitations, requirements, and measures shall be those which he determines must be complied with by the source in order to assure (throughout the period that the suspension or extension will be in effect) that the burning of coal by such source will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard for such pollutant.

"(B) Whenever the Administrator prescribes a limitation, requirement, or measure under subparagraph (A) of this paragraph with respect to a source, he shall determine the earliest date on which such source will be able to comply with such limitation, requirement, or measure, and with any regional limitation applicable to such source.

"(C) An air pollution control agency may petition the Administrator (A) to modify any limitation, requirement, or other measure under this paragraph so as to assure compliance with the requirements of this paragraph, or (B) to issue to the Federal Energy Administration the certification described in paragraph (3)(B) on the grounds described in clause (iii) thereof. The Administrator shall take the action requested in the petition, or

deny the petition, within 90 days after the date of receipt of the petition.

"(3)(A) If the Administrator determines that a source to which a suspension under subsection (b)(1)(A)(ii) or to which a compliance date extension under subsection (c)(1) applies is not in compliance with any primary standard condition, or that a source to which a compliance date extension applies is not in compliance with a regional limitation applicable to it, he shall (except as provided in subparagraph (B)) either—

"(i) enforce compliance with such condition or limitation under section 113, or

"(ii) (after notice to the public and affording an opportunity for interested persons to present data, views, and arguments, including oral presentations, to the extent practicable) revoke such suspension or compliance date extension.

"(B) If the Administrator finds that for any period—

"(i) a source, to which an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 applies, will be unable to comply with a primary standard condition or regional limitation,

"(ii) such a source will not be in compliance with such a condition or limitation, but such condition or limitation cannot be enforced because of a court order restraining its enforcement, or

"(iii) the burning of coal by such a source will result in an increase in emissions of any air pollutant for which national ambient air quality standards have not been promulgated (or an air pollutant which is transformed in the atmosphere into an air pollutant for which such a standard has not been promulgated), and that such increase may cause (or materially contribute to) a significant risk to public health,

he shall notify the Federal Energy Administrator of his finding and certify the period for which such order under such section 2(a) shall not be in effect with respect to such source. Subject to the conditions of the preceding sentence, such certification may be modified from time to time. For purposes of this subsection, subsection (c), and section 2(a) or (b) of the Energy Supply and Environmental Coordination Act of 1974, a source shall be considered unable to comply with an air pollution requirement (including a primary standard condition or regional limitation) only if necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time.

"(4) Nothing in this Act shall prohibit a State, political subdivision of a State, or agency or instrumentality of either, from enforcing any primary standard condition or regional limitation.

"(5) A conversion to coal (A) to which a suspension under subsection (b) or a compliance date extension under subsection (c) applies or (B) by reason of an order under section 2(a) of

the Energy Supply and Environmental Coordination Act of 1974 shall not be deemed to be a modification for purposes of section 111(a)(2) and (4) of this Act.

"(e) The Administrator may, by rule, establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out subsection (c) shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to sources in air quality control regions in which national primary ambient air quality standards have not been achieved. No rule under this subsection may impair the obligation of any contract entered into before the date of enactment of this section. To the extent necessary to carry out this section, the Administrator may prohibit any State or political subdivision of a State, or an agency or instrumentality of either, from requiring any person to use a continuous emission reduction system for which priorities have been established under this subsection, except in accordance with such priorities.

"(f) No State, political subdivision of a State, or agency or instrumentality of either, may require any person to whom a suspension has been issued under subsection (b)(1) to use any fuel the unavailability of which is the basis of such person's suspension (except that this subsection shall not apply to requirements under subsection (b)(3) or subsection (d)(2)).

"(g)(1) It shall be unlawful for any person to whom a suspension has been issued under subsection (b)(1) to violate any requirement on which the suspension is conditioned pursuant to subsection (b)(3) or any primary standard condition applicable to him.

"(2) It shall be unlawful for any person to fail to comply with any requirement under subsection (c), or any regulation, plan, or schedule thereunder (including a primary standard condition or regional limitation), which is applicable to such person.

"(3) It shall be unlawful for any person to violate any rule under subsection (e).

"(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i)(3).

"(h) Nothing in this section shall affect the power of the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.

"(i)(1) In order to reduce the likelihood of early phaseout of existing electric generating powerplants, any electric generating powerplant (A) which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on January 1, 1974) of the owner or operator of such plant, (B) for which a certification to that effect has been filed by the owner or operator of the plant with the Environmental Protection Agency and the Federal Power Commission, and (C) for which such Commission has determined that the certifi-

cation has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single one-year postponement as provided in paragraph (2).

"(2) Prior to the date on which any powerplant eligible under paragraph (1) is required to comply with any requirement of an applicable implementation plan, such plant may apply (with the concurrence of the Governor of the State in which the plant is located) to the Administrator to postpone the applicability of such requirement to such plant for not more than one year. If the Administrator determines, after considering the risk to public health and welfare which may be associated with a postponement. that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increases to pay for the costs of such compliance, and other appropriate factors, then the Administrator shall grant a postponement of any such requirement.

"(3) The Administrator shall, as a condition of any postponement under paragraph (2), prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph (2).

"(j)(1) The Administrator may, after public notice and opportunity for presentation of data, views, and arguments in accordance with section 553 of title 5, United States Code, and after consultation with the Federal Energy Administrator, designate persons with respect to whom fuel exchange requirements should be imposed under paragraph (2) of this subsection. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any suspension under subsection (b) of this section or conversion to coal to which subsection (c) applies or of any allocation under section 2(d) of the Energy Supply and Environmental Coordination Act of 1974 or under the Emergency Petroleum Allocation Act of 1973.

"(2) The Federal Energy Administrator shall exercise his authority under section 2(d) of the Energy Supply and Environmental Coordination Act of 1974 and under the Emergency Petroleum Allocation Act of 1973 with respect to persons designated by the Administrator of the Environmental Protection Agency under paragraph (1) in order to require the exchange of any fuel subject to allocation under such Acts effective no later than forty-five days after the date of such designation, unless the Federal Energy Administrator determines, after consultation with the Administrator of the Environmental Protection Agency, that the costs or consumption of fuel, resulting from requiring such exchange, will be excessive.

"(k)(1) The Administrator shall study, and report to Congress not later than six months after the date of enactment of this section, with respect to—

"(A) the present and projected impact of fuel shortages

and fuel allocation programs on the program under this Act;

"(B) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction systems would have on the total environment and on supplies of fuel and electricity;

"(C) the number of sources and locations which must use such technology based on projected fuel availability data;

"(D) a priority schedule for installation of continuous emission reduction technology, based on public health or air quality;

"(E) evaluation of availability of technology to burn municipal solid waste in electric powerplants or other major fuel burning installations, including time schedules, priorities, analysis of pollutants which may be emitted (including those for which national ambient air quality standards have not been promulgated), and a comparison of health benefits and detriments from burning solid waste and of economic costs;

"(F) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time for attainment prescribed in this Act, including associated considerations of cost, time for attainment, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

"(G) proposed priorities, for continuous emission reduction systems which do not produce solid waste, for sources which are least able to handle solid waste byproducts of such systems;

"(H) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentrations of sulfur dioxide in the ambient air; and

"(I) steps taken pursuant to authority of section 110 (a)(3)(B) of this Act.

"(2) Beginning January 1, 1975, the Administrator shall publish in the Federal Register, at no less than one-hundred-and-eighty-day intervals, the following:

"(A) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (c) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsection.

"(B) Up-to-date findings on the impact of this section upon—

"(i) applicable implementation plans, and

"(ii) ambient air quality.

TITLE II—EMISSION STANDARDS FOR MOVING SOURCES

SHORT TITLE

"SEC. 201. This title may be cited as the 'National Emission Standards Act.'

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

ESTABLISHMENT OF STANDARDS

"SEC. 202. (a) Except as otherwise provided in subsection (b)—

"(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment causes or contributes to, or is likely to cause or to contribute to, air pollution which endangers the public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d)), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

"(2) Any regulation prescribed under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

"(b) (1) (A) The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5) (A) of this subsection for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light duty vehicles and engines manufactured during or after model year 1977 shall contain standards which require a reduction of at least 90 per centum from emissions of carbon monoxide and hydrocarbons allowable under the standards under this section applicable to light duty vehicles and engines manufactured in model year 1970.

"(B) The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year

1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light duty vehicles and engines manufactured during or after model year 1978 shall contain standards which require a reduction of at least 90 per centum from the average of emissions of oxides of nitrogen actually measured from light duty vehicles manufactured during model year 1971 which are not subject to any Federal or State emission standard for oxides of nitrogen. Such average of emissions shall be determined by the Administrator on the basis of measurements made by him.

"(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to the date of enactment of the Clean Air Act Amendments of 1970), shall be prescribed by regulation within 180 days after such date.

"(3) For purposes of this part—

"(A) (i) The term 'model year' with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term 'model year' shall mean the calendar year.

"(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b), the Administrator may prescribe regulations defining 'model year' otherwise than as provided in clause (i).

"(B) The term 'light duty vehicles and engines' means new light duty motor vehicles and new light duty motor vehicle engines, as determined under regulations of the Administrator.

"(4) On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary to achieve the purposes of this Act. In gathering information for the purposes of this paragraph and in connection with any hearing, the provisions of section 307(a) (relating to subpenas) shall apply.

"(5) (A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting

the suspension for one year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within sixty days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977.

"(B) Any interim standards prescribed under this paragraph shall reflect the greatest degree of emission control which is achievable by application of technology which the Administrator determines is available, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers.

"(C) Within 60 days after receipt of the application for any such suspension, and after public hearing, the Administrator shall issue a decision granting or refusing such suspension. The Administrator shall grant such suspension only if he determines that (i) such suspension is essential to the public interest or the public health and welfare of the United States; (ii) all good faith efforts have been made to meet the standards established by this subsection; (iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available for a sufficient period of time to achieve compliance prior to the effective date of such standards, and (iv) the study and investigation of the National Academy of Sciences conducted pursuant to subsection (c) and other information available to him has not indicated that technology, processes, or other alternatives are available to meet such standards.

"(D) Nothing in this paragraph shall extend the effective date of any emission standard required to be prescribed under this subsection for more than one year.

"(c)(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

"(2) Of the funds authorized to be appropriated to the Administrator by this Act, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

"(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to

the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

"(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this Act (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection:

"(d) The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a) (1) of this section and section 207. Such regulations shall provide that useful life shall—

"(1) in the case of light duty vehicles and light duty vehicle engines, be a period of use of five years or of fifty thousand miles (or the equivalent), whichever first occurs; and

"(2) in the case of any other motor vehicle or motor vehicle engine, be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate.

"(e) In the event a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 206(a), the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers the public health or welfare but for which standards have not been prescribed under subsection (a).

PROHIBITED ACTS

"SEC. 203. (a) The following acts and the causing thereof are prohibited—

"(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator) the importation into the United States of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part (except as provided in subsection (b));

"(2) for any person to fail or refuse to permit access to or

copying of records or to fail to make reports or provide information, required under section 208;

"(3) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

"(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 202—

"(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with the requirements of section 207(a) and (b) with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 207(c)(3), or

"(B) to fail or refuse to comply with the requirements of section 207(c) or (e).

"(b)(1) The Administrator may exempt any new motor vehicle or new motor vehicle engine from subsection (a), upon such terms and conditions as he may find necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

"(2) A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Administrator under this part.

"(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a), except that if the country of export has emission standards which differ from the standards

prescribed under subsection (a), then such vehicle or engine shall comply with the standards of such country of export.

"(c) Upon application therefor, the Administrator may exempt from section 203(a)(3) any vehicles (or class thereof) manufactured before the 1974 model year from section 203(a)(3) for the purpose of permitting modifications to the emission control device or system of such vehicle in order to use fuels other than those specified in certification testing under section 206(a)(1), if the Administrator, on the basis of information submitted by the applicant, finds that such modification will not result in such vehicle or engine not complying with standards under section 202 applicable to such vehicle or engine. Any such exemption shall identify (1) the vehicle or vehicles so exempted, (2) the specific nature of the modification, and (3) the person or class of persons to whom the exemption shall apply.

INJUNCTION PROCEEDINGS

"SEC. 204. (a) The district courts of the United States shall have jurisdiction to restrain violations of paragraph (1), (2), (3), or (4) of section 203(a).

"(b) Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpenas for witnesses who are required to attend a district court in any district may run into any other district.

PENALTIES

"SEC. 205. Any person who violates paragraph (1), (2), (3), or (4) of section 203(a) shall be subject to a civil penalty of not more than $10,000. Any such violation with respect to paragraph (1), (2), or (4) of section 203(a) shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine.

MOTOR VEHICLE AND MOTOR VEHICLE ENGINE COMPLIANCE TESTING AND CERTIFICATION

"SEC. 206. (a)(1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 202 of this Act. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe.

"(2) The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to him by any person, in order to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under section 202(b) of this Act. If the Administrator finds on the basis of such tests that such vehicle or

engine conforms to such standards, the Administrator shall issue a verification of compliance with emission standards for such system when incorporated in vehicles of a class of which the tested vehicle is representative. He shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of such tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulations.

"(b) (1) In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer.

"(2) (A) (i) If, based on tests conducted under paragraph (1) on a sample of new vehicles or engines covered by a certificate of conformity, the Administrator determines that all or part of the vehicles or engines so covered do not conform with the regulations with respect to which the certificate of conformity was issued, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and shall apply until such time as the Administrator finds that vehicles and engines manufactured by the manufacturer do conform to such regulations. If, during any period of suspension or revocation, the Administrator finds that a vehicle or engine actually conforms to such regulations, he shall issue a certificate of conformity applicable to such vehicle or engine.

"(ii) If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that such vehicle or engine does not conform with such regulations, he may suspend or revoke such certificate insofar as it applies to such vehicle or engine until such time as he finds such vehicle or engine actually so conforms with such regulations, and he shall so notify the manufacturer.

"(B) (i) At the request of any manufacturer the Administrator shall grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

"(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the 60th day after such determination is made, file a petition with the United States court of appeals for the circuit wherein such manufacturer resides or has his principal place of business for a judicial review of such determination. A copy of

the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court, the record of the proceedings on which the Administrator based his determination, as provided in section 2112 of title 28 of the United States Code.

"(iii) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

"(iv) Upon the filing of the petition referred to in clause (ii), the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter.

"(c) For purposes of enforcement of this section, officers or employees duly designated by the Administrator, upon presenting appropriate credentials to the manufacturer or person in charge, are authorized (1) to enter, at reasonable times, any plant or other establishment of such manufacturers, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer, or (2) to inspect at reasonable times, records, files, papers, processes, controls, and facilities used by such manufacturer in conducting tests under regulations of the Administrator. Each such inspection shall be commenced and completed with reasonable promptness.

"(d) The Administrator shall by regulation establish methods and procedures for making tests under this section.

"(e) The Administrator shall announce in the Federal Register and make available to the public the results of his tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a) as promptly as possible after the enactment of the Clean Air Amendments of 1970 and at the beginning of each model year which begins thereafter. Such results shall be described in such nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 202 of this Act.

COMPLIANCE BY VEHICLES AND ENGINES IN ACTUAL USE

"SEC. 207. (a) Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after

the date of the enactment of the Clean Air Act Amendments of 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (1) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 202, and (2) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under sec. 202(d)) .

"(b) If the Administrator determines that (i) there are available testing methods and procedures to ascertain whether, when in actual use throughout its useful life (as determined under section 202(d)), each vehicle and engine to which regulations under section 202 apply complies with the emission standards of such regulations, (ii) such methods and procedures are in accordance with good engineering practices, and (iii) such methods and procedures are reasonably capable of being correlated with tests conducted under section 206(a)(1), then—

"(1) he shall establish such methods and procedures by regulation, and

"(2) at such time as he determines that inspection facilities or equipment are available for purposes of carrying out testing methods and procedures established under paragraph (1), he shall prescribe regulations which shall require manufacturers to warrant the emission control device or system of each new motor vehicle or new motor vehicle engine to which a regulation under section 202 applies and which is manufactured in a model year beginning after the Administrator first prescribes warranty regulations under this paragraph (2). The warranty under such regulations shall run to the ultimate purchaser and each subsequent purchaser and shall provide that if—

"(A) the vehicle or engine is maintained and operated in accordance with instructions under subsection (c)(3),

"(B) it fails to conform at any time during its useful life (as determined under section 202(d)) to the regulations prescribed under section 202, and

"(C) such nonconformity results in the ultimate purchaser (or any subsequent purchaser) of such vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use such vehicle or engine) under State or Federal law,

then such manufacturer shall remedy such nonconformity under such warranty with the cost thereof to be borne by the manufacturer.

"(c) Effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after the date of enactment of the Clean Air Amendments of 1970—

"(1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 202, when in actual

use throughout their useful life (as determined under section 202(d)), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer. If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing the Administrator withdraws such determination of nonconformity, he shall ,within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (2).

"(2) Any notification required by paragraph (1) with respect to any class or category of vehicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulations require.

"(3) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine such written instructions for the maintenance and use of the vehicle or engine by the ultimate purchaser as may be reasonable and necessary to assure the proper functioning of emission control devices and systems. In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 202. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

"(d) Any cost obligation of any dealer incurred as a result of any requirement imposed by subsection (a), (b), or (c) shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

"(e) If a manufacturer includes in any advertisement a statement respecting the cost or value of emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311.

"(f) Any inspection of a motor vehicle or a motor vehicle engine for purposes of subsection (c) (1), after its sale to the ulti-

mate purchaser, shall be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any State or local inspection program.

RECORDS AND REPORTS

"SEC. 208. (a) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this part and regulations thereunder and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to and copy such records.

"(b) Any records, reports or information obtained under subsection (a) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under his control, from the duly authorized committees of the Congress.

STATE STANDARDS

"SEC. 209. (a) No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

"(b) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, unless he finds that such State does not require standards more stringent

than applicable Federal standards to meet compelling and extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this part.

"(c) Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

STATE GRANTS

"SEC. 210. The Administrator is authorized to make grants to appropriate State agencies in an amount up to two-thirds of the cost of developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs, except that—

"(1) no such grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program;

"(2) no such grant shall be made unless the Secretary of Transportation has certified to the Administrator that such program is consistent with any highway safety program developed pursuant to section 402 of title 23 of the United States Code; and

"(3) no such grant shall be made unless the program includes provisions designed to insure that emission control devices and systems on vehicles in actual use have not been discontinued or rendered inoperative.

REGULATION OF FUELS

"SEC. 211. (a) The Administrator may by regulation designate any fuel or fuel additive and, after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel or additive may sell, offer for sale, or introduce into commerce such fuel or additive unless the Administrator has registered such fuel or additive in accordance with subsection (b) of this section.

"(b)(1) For the purpose of registration of fuels and fuel additives, the Administrator shall require—

"(A) the manufacturer of any fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of any additive in the fuel; and the purpose-in-use of any such additive; and

"(B) the manufacturer of any additive to notify him as to the chemical composition of such additive.

"(2) For the purpose of registration of fuels and fuel additives, the Administrator may also require the manufacturer of any fuel or fuel additive—

"(A) to conduct tests to determine potential public health

effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects), and

"(B) to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and such other information as is reasonable and necessary to determine the emissions resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel or additive on the emission control performance of any vehicle or vehicle engine, or the extent to which such emissions affect the public health or welfare.

Tests under subparagraph (A) shall be conducted in conformity with test procedures and protocols established by the Administrator. The result of such tests shall not be considered confidential.

"(3) Upon compliance with the provision of this subsection, including assurances that the Administrator will receive changes in the information required, the Administrator shall register such fuel or fuel additive.

"(c) (1) The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle or motor vehicle engine (A) if any emission products of such fuel or fuel additive will endanger the public health or welfare, or (B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.

"(2) (A) No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (A) of paragraph (1) except after consideration of all relevant medical and scientific evidence available to him, including consideration of other technologically or economically feasible means of achieving emission standards under section 202.

"(B) No fuel or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (B) of paragraph (1) except after consideration of available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require the proposed control or prohibition with emission control devices or systems which are or will be in general use and do not require the proposed control or prohibition. On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter he is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

"(C) No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless he finds, and publishes such

finding, that in his judgment such prohibition will not cause the use of any other fuel or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the fuel or fuel additive proposed to be prohibited.

"(3)(A) For the purpose of obtaining evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information which has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

"(B) In obtaining information under subparagraph (A), section 307(a) (relating to subpenas) shall be applicable.

"(4)(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

"(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or

"(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

"(B) Any State for which application of section 209(a) has at any time been waived under section 209(b) may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

"(C) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

"(d) Any person who violates subsection (a) or the regulations prescribed under subsection (c) or who fails to furnish any information required by the Administrator under subsection (b) shall forfeit and pay to the United States a civil penalty of $10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Administrator may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection and he shall have authority to determine the facts upon all such applications.

DEVELOPMENT OF LOW-EMISSION VEHICLES

"SEC. 212. (a) For the purpose of this section—

"(1) The term 'Board' means the Low-Emission Vehicle Certification Board.

"(2) The term 'Federal Government' includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

"(3) The term 'motor vehicle' means any self-propelled vehicle designed for use in the United States on the highways, other than a vehicle designed or used for military field training, combat, or tactical purposes.

"(4) The term 'low-emission vehicle' means any motor vehicle which—

"(A) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under section 202 at the time of procurement to that type of vehicle; and

"(B) with respect to all other air pollutants meets the new motor vehicle standards applicable under section 202 at the time of procurement of that type of vehicle.

"(5) The term 'retail price' means (A) the maximum statutory price applicable to any class or model of motor vehicle; or (B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any class or model of motor vehicle.

"(b) (1) There is established a Low-Emission Vehicle Certification Board to be composed of the Administrator or his designee, the Secretary of Transportation or his designee, the Chairman of the Council on Environmental Quality or his designee, the Director of the National Highway Safety Bureau in the Department of Transportation, the Administrator of General Services, and two members appointed by the President. The President shall designate one member of the Board as Chairman.

"(2) Any member of the Board not employed by the United States may receive compensation at the rate of $125 for each day such member is engaged upon work of the Board. Each member of the Board shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(3) (A) The Chairman, with the concurrence of the members of the Board, may employ and fix the compensation of such additional personnel as may be necessary to carry out the functions of the Board, but no individual so appointed shall receive compensation in excess of the rate authorized for GS–18 by section 5332 of title 5, United States Code.

"(B) The Chairman may fix the time and place of such meetings as may be required, but a meeting of the Board shall be called whenever a majority of its members so request.

"(C) The Board is granted all other powers necessary for meeting its responsibilities under this section.

"(c) The Administrator shall determine which models or classes of motor vehicles qualify as low-emission vehicles in accordance with the provisions of this section.

"(d) (1) The Board shall certify any class or model of motor vehicles—

"(A) for which a certification application has been filed in accordance with paragraph (3) of this subsection;

"(B) which is a low-emission vehicle as determined by the Administrator; and

"(C) which it determines is suitable for use as a substitute for a class or model of vehicles at that time in use by agencies of the Federal Government.

The Board shall specify with particularity the class or model of vehicles for which the class or model of vehicles described in the application is a suitable substitute. In making the determination under this subsection the Board shall consider the following criteria:

"(i) the safety of the vehicle;

"(ii) its performance characteristics;

"(iii) its reliability potential;

"(iv) its serviceability;

"(v) its fuel availability;

"(vi) its noise level; and

"(vii) its maintenance costs as compared with the class or model of motor vehicle for which it may be a suitable substitute.

"(2) Certification under this section shall be effective for a period of one year from the date of issuance.

"(3) (A) Any party seeking to have a class or model of vehicle certified under this section shall file a certification application in accordance with regulations prescribed by the Board.

"(B) The Board shall publish a notice of each application received in the Federal Register.

"(C) The Administrator and the Board shall make determinations for the purpose of this section in accordance with procedures prescribed by regulation by the Administrator and the Board, respectively.

"(D) The Administrator and the Board shall conduct whatever investigation is necessary, including actual inspection of the vehicle at a place designated in regulations prescribed under subparagraph (A).

"(E) The Board shall receive and evaluate written comments and documents from interested parties in support of, or in opposition to, certification of the class or model of vehicle under consideration.

"(F) Within ninety days after the receipt of a properly filed certification application, the Administrator shall determine whether such class or model of vehicle is a low-emission vehicle, and within 180 days of such determination, the Board shall reach a decision by majority vote as to whether such class or model of vehicle, having been determined to be a low-emission vehicle, is a suitable substitute for any class or classes of vehicles presently being purchased by the Federal Government for use by its agencies.

"(G) Immediately upon making any determination or decision

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under subparagraph (F), the Administrator and the Board shall each publish in the Federal Register notice of such determination or decision, including reasons therefor and in the case of the Board, any dissenting views.

"(e) (1) Certified low-emission vehicles shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other vehicles if the Administrator of General Services determines that such certified vehicles have procurement costs which are no more than 150 per centum of the retail price of the least expensive class or model of motor vehicle for which they are certified substitutes.

"(2) In order to encourage development of inherently low-polluting propulsion technology, the Board may, at its discretion, raise the premium set forth in paragraph (1) of this subsection to 200 per centum of the retail price of any class or model of motor vehicle for which a certified low-emission vehicle is a certified substitute, if the Board determines that the certified low-emission vehicle is powered by an inherently low-polluting propulsion system.

"(3) Data relied upon by the Board and the Administrator in determining that a vehicle is a certified low-emission vehicle shall be incorporated in any contract for the procurement of such vehicle.

"(f) The procuring agency shall be required to purchase available certified low-emission vehicles which are eligible for purchase to the extent they are available before purchasing any other vehicles for which any low-emission vehicle is a certified substitute. In making purchasing selections between competing eligible, certified low-emission vehicles, the procuring agency shall give priority to (1) any class or model which does not require extensive periodic maintenance to retain its low-polluting qualities or which does not require the use of fuels which are more expensive than those of the classes or models of vehicles for which it is a certified substitute; and (2) passenger vehicles other than buses.

"(g) For the purpose of procuring certified low-emission vehicles any statutory price limitations shall be waived.

"(h) The Administrator shall, from time to time as the Board deems appropriate, test the emissions from certified low-emission vehicles purchased by the Federal Government. If at any time he finds that the emission rates exceed the rates on which certification under this section was based, the Administrator shall notify the Board. Thereupon the Board shall give the supplier of such vehicles written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Board, the Board may order the supplier to show cause why the vehicle involved should be eligible for recertification.

"(i) There are authorized to be appropriated for paying additional amounts for motor vehicles pursuant to, and for carrying out the provisions of, this section, $5,000,000 for the fiscal year ending June 30, 1971, and $25,000,000 for each of the four succeeding fiscal years.

"(j) The Board shall promulgate the procedures required to implement this section within one hundred and eighty days after the date of enactment of the Clean Air Act Amendments of 1970.

FUEL ECONOMY IMPROVEMENT FROM NEW MOTOR VEHICLES

"Sec. 213(a)(1) The Administrator and the Secretary of Transportation shall conduct a joint study, and shall report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committees on Public Works and Commerce of the United States Senate within one hundred and twenty days following the date of enactment of this section, concerning the practicability of establishing a fuel economy improvement standard of 20 per centum for new motor vehicles manufactured during and after model year 1980. Such study and report shall include, but not be limited to, the technological problems of meeting any such standard, including the leadtime involved; the test procedures required to determine compliance; the economic costs associated with such standard, including any beneficial economic impact; the various means of enforcing such standard; the effect on consumption of natural resources, including energy consumed; and the impact of applicable safety and emission standards. In the course of performing such study, the Administrator and the Secretary of Transportation shall utilize the research previously performed in the Department of Transportation, and the Administrator and the Secretary shall consult with the Federal Energy Administrator, the Chairman of the Council on Environmental Quality, and the Secretary of the Treasury. The Office of Management and Budget may review such report before its submission to such committees of the Congress, but such Office may not revise the report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting such report. In connection with such study, the Administrator may utilize the authority provided in section 307(a) of this Act to obtain necessary information.

"(2) For the purpose of this section, the term 'fuel economy improvement standard' means a requirement of a percentage increase in the number of miles of transportation provided by a manufacturer's entire annual production of new motor vehicles per unit of fuel consumed, as determined for each manufacturer in accordance with test procedures established by the Administrator pursuant to this Act. Such term shall not include any requirement for any design standard or any other requirement specifying or otherwise limiting the manufacturer's discretion in deciding how to comply with the fuel economy improvement standard by any lawful means.

DEFINITIONS FOR PART A

"Sec. 214. As used in this part—

"(1) The term 'manufacturer' as used in sections 202, 203, 206, 207, and 208 means any person engaged in the manu-

facturing or assembling of new motor vehicles or new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce.

"(2) The term 'motor vehicle' means any self-propelled vehicle designed for transporting persons or property on a street or highway.

"(3) Except with respect to vehicles or engines imported or offered for importation, the term 'new motor vehicle' means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term 'new motor vehicle engine' means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 202 which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

"(4) The term 'dealer' means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

"(5) The term 'ultimate purchaser' means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

"(6) The term 'commerce' means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

PART B—AIRCRAFT EMISSION STANDARDS

ESTABLISHMENT OF STANDARDS

"SEC. 231 (a) (1) Within 90 days after the date of enactment of the Clean Air Amendments of 1970, the Administrator shall commence a study and investigation of emissions of air pollutants from aircraft in order to determine—

"(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

"(B) the technological feasibility of controlling such emissions.

"(2) Within 180 days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall issue proposed emission standards applicable to emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare.

"(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

"(b) Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

"(c) Any regulations under this section, or amendments thereto, with respect to aircraft, shall be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for aircraft safety.

ENFORCEMENT OF STANDARDS

"SEC. 232 (a) The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 231 by the Administrator. The regulations of the Secretary of Transportation shall include provisions making such standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by the Federal Aviation Act or the Department of Transportation Act. Such Secretary shall insure that all necessary inspections are accomplished, and, may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

"(b) In any action to amend, modify, suspend, or revoke a certificate in which violation of an emission standard prescribed under section 231 or of a regulation prescribed under subsection (a) is at issue, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in the Federal Aviation Act of 1958 or the Department of Transportation Act, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation and that such amendment, modification, or revocation is consistent with safety in air transportation.

STATE STANDARDS AND CONTROLS

"SEC. 233. No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

DEFINITIONS

"SEC. 234. Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 101 of the Federal Aviation Act of 1958.

TITLE III—GENERAL

ADMINISTRATION

"SEC. 301. (a) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this Act, except the making of regulations, as he may deem necessary or expedient.

"(b) Upon the request of an air pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this Act.

"(c) Payments under grants made under this Act may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administrator.

DEFINITIONS

"SEC. 302. When used in this Act—

"(a) The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(b) The term 'air pollution control agency' means any of the following:

"(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this Act;

"(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution;

"(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency; or

"(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

"(c) The term 'interstate air pollution control agency' means—

"(1) an air pollution control agency established by two or more States, or

"(2) an air pollution control agency of two or more municipalities located in different States.

"(d) The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

"(e) The term 'person' includes an individual, corporation, partnership, association, State, municipality, and political subdivision of a State.

"(f) The term 'municipality' means a city, town, borough,

county, parish, district, or other public body created by or pursuant to State law.

"(g) The term 'air pollutant' means an air pollution agent or combination of such agents.

"(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

EMERGENCY POWERS

"SEC. 303. Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted to abate such sources, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary.

CITIZEN SUITS

"SEC. 304. (a) Except as provided in subsection (b), any person may commence a civil action on his own behalf—

"(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this Act or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

"(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be.

"(b) No action may be commenced—

"(1) under subsection (a) (1)—

"(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

"(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of

the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

"(2) under subsection (a)(2) prior to 60 days after the plaintiff has given notice of such action to the Administrator, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 112(c)(1)(B) or an order issued by the Administrator pursuant to section 113(a). Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

"(c)(1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

"(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

"(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

"(f) For purposes of this section, the term 'emission standard or limitation under this Act' means—

"(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard, or

"(2) a control or prohibition respecting a motor vehicle fuel or fuel additive,

which is in effect under this Act (including a requirement applicable by reason of section 118) or under an applicable implementation plan.

APPEARANCE

"SEC. 305. The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this Act to which the Administrator is a party. Unless the Attorney General notifies the Administrator that he will appear in such action, within a reasonable time, attorneys appointed by the Administrator shall appear and represent him.

FEDERAL PROCUREMENT

"SEC. 306. (a) No Federal agency may enter into any contract with any person who is convicted of any offense under section

113(c)(1) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected.

"(b) The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).

"(c) In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Act Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

"(d) The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

"(e) The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section.

GENERAL PROVISION RELATING TO ADMINISTRATIVE PROCEEDINGS AND JUDICIAL REVIEW

"SEC. 307 (a)(1) In connection with any determination under section 110(f) or section 202(b)(5), or for purposes of obtaining information under section 202(b)(4) or 211(c)(3), the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 202(c), or when relevant in any proceeding under this Act. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the

United States. In cases of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(b)(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard under section 112, any standard of performance under section 111 any standard under section 202 (other than a standard required to be prescribed under section 202(b)(1)), any determination under section 202(b)(5), any control or prohibition under section 211, or any standard under section 231 may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 110 or section 111(d), or his action under section 119(c)(2)(A), (B), or (C) or under regulations thereunder, may be filed only in the United States Court of Appeals for the appropriate circuit. Any such petition shall be filed within 30 days from the date of such promulgation, approval, or action, or after such date if such petition is based solely on grounds arising after such 30th day.

"(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement.

"(c) In any judicial proceeding in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

MANDATORY LICENSING

"SEC. 308. Whenever the Attorney General determines, upon application of the Administrator—

' (1) that—

"(A) in the implementation of the requirements of section 111, 112, or 202 of this Act, a right under any

United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

"(B) there are no reasonable alternative methods to accomplish such purpose, and

"(2) that the unavailability of such right may result in a substantial lessening of competition or tendency to create a monopoly in any line of commerce in any section of the country,

the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found.

POLICY REVIEW

"SEC. 309. (a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this Act or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action other than a project for construction to which section 102(2)(C) of Public Law 91–190 applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

"(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

OTHER AUTHORITY NOT AFFECTED

"SEC. 310. (a) Except as provided in subsection (b) of this section, this Act shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.

"(b) No appropriation shall be authorized or made under section 301, 311, or 314 of the Public Health Service Act for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this Act.

RECORDS AND AUDIT

"SEC. 311. (a) Each recipient of assistance under this Act shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such

recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this Act.

COMPREHENSIVE ECONOMIC COST STUDIES

"SEC. 312. (a) In order to provide the basis for evaluating programs authorized by this Act and the development of new programs and to furnish the Congress with the information necessary for authorization of appropriations by fiscal years beginning after June 30, 1969, the Administrator, in cooperation with State, interstate, and local air pollution control agencies, shall make a detailed estimate of the cost of carrying out the provisions of this Act; a comprehensive study of the cost of program implementation by affected units of government; and a comprehensive study of the economic impact of air quality standards on the Nation's industries, communities, and other contributing sources of pollution, including an analysis of the national requirements for and the cost of controlling emissions to attain such standards of air quality as may be established pursuant to this Act or applicable State law. The Administrator shall submit such detailed estimate and the results of such comprehensive study of cost for the five-year period beginning July 1, 1969, and the results of such other studies, to the Congress not later than January 10, 1969, and shall submit a reevaluation of such estimate and studies annually thereafter.

"(b) The Administrator shall also make a complete investigation and study to determine (1) the need for additional trained State and local personnel to carry out programs assisted pursuant to this Act and other programs for the same purpose as this Act; (2) means of using existing Federal training programs to train such personnel; and (3) the need for additional trained personnel to develop, operate and maintain those pollution control facilities designed and installed to implement air quality standards. He shall report the results of such investigation and study to the President and the Congress not later than July 1, 1969.

ADDITIONAL REPORTS TO CONGRESS

"SEC. 313. Not later than six months after the effective date of this section and not later than January 10 of each calendar year beginning after such date, the Administrator shall report to the Congress on measures taken toward implementing the purpose and intent of this Act including, but not limited to, (1) the progress and problems associated with control of automotive exhaust emissions and the research efforts related thereto; (2) the development of air quality criteria and recommended emission con-

trol requirements; (3) the status of enforcement actions taken pursuant to this Act; (4) the status of State ambient air standards setting, including such plans for implementation and enforcement as have been developed; (5) the extent of development and expansion of air pollution monitoring systems; (6) progress and problems related to development of new and improved control techniques; (7) the development of quantitative and qualitative instrumentation to monitor emissions and air quality; (8) standards set or under consideration pursuant to title II of this Act; (9) the status of State, interstate, and local pollution control programs established pursuant to and assisted by this Act; and (10) the reports and recommendations made by the President's Air Quality Advisory Board.

LABOR STANDARDS

"SEC. 314. The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this Act shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the locality as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C. 276a—276a–5). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c).

SEPARABILITY

"SEC. 315. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

APPROPRIATIONS

"SEC. 316. There are authorized to be appropriated to carry out this Act, other than sections 103(f)(3) and (d), 104, 212, and 403, $125,000,000 for the fiscal year ending June 30, 1971, $225,000,000 for the fiscal year ending June 30, 1972, $300,000,000 for the fiscal year ending June 30, 1973, $300,000,000 for the fiscal year ending June 30, 1974, and $300,000,000 for the fiscal year ending June 30, 1975.

SAVINGS PROVISIONS [1]

"SEC. 16. (a)(1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education, and Welfare, or to the Administrator pursuant to the Clean Air Act prior to enactment of this Act may be approved under section 110 of the

[1] Provisions included in Clean Air Act Amendments of 1970. In these provisions, the phrases "prior to enactment of this Act" and "as amended by this Act" refer to enactment of the Clean Air Act Amendments of 1970.

Clean Air Act (as amended by this Act) and shall remain in effect, unless the Administrator determines that such implementation plan, or any portion thereof, is not consistent with the applicable requirements of the Clean Air Act (as amended by this Act) and will not provide for the attainment of national primary ambient air quality standards in the time required by such Act. If the Administrator so determines, he shall, within ninety days after promulgation of any national ambient air quality standards pursuant to section 109(a) of the Clean Air Act, notify the State and specify in what respects changes are needed to meet the additional requirements of such Act, including requirements to implement national secondary ambient air quality standards. If such changes are not adopted by the State after public hearings and within six months after such notification, the Administrator shall promulgate such changes pursuant to section 110(c) of such Act.

"(2) The amendments made by section 4(b) shall not be construed as repealing or modifying the powers of the Administrator with respect to any conference convened under section 108(d) of the Clean Air Act before the date of enactment of this Act.[2]

"(b) Regulations or standards issued under title II of the Clean Air Act prior to the enactment of this Act shall continue in effect until revised by the Administrator consistent with the purposes of such Act.

"(1) Section 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1421) is amended by adding at the end thereof the following new subsection:

AVIATION FUEL STANDARDS [1]

"(d) The Administrator shall prescribe, and from time to time revise, regulations (1) establishing standards governing the composition or the chemical or physical properties of any aircraft fuel or fuel additive for the purpose of controlling or eliminating aircraft emissions which the Administrator of the Environmental Protection Agency (pursuant to section 231 of the Clean Air Act) determines endanger the public health or welfare, and (2) providing for the implementation and enforcement of such standards.

"(2) Section 610(a) of such Act (49 U.S.C. 1430(a)) is amended by striking out "and" at the end of paragraph (7); by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; and" and by adding after paragraph (8) the following new paragraph:

"(9) For any person to manufacture, deliver, sell, or offer for sale, any aviation fuel or fuel additive in violation of any regulation prescribed under section 601(d)."

"(3) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"SEC. 601 General Safety Powers and Duties."

is amended by adding at the end thereof the following:

"(d) Aviation fuel standards."

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[2] The amendments referred to in this paragraph were contained in section 4(b) of the Clean Air Amendments of 1970. They are reflected in the provisions of what is now section 115 of the Clean Air Act.

[1] These amendments to the Federal Aviation Act were made by the Clean Air Amendments of 1970 and are included herein because of their relationship to the Clean Air Act.

Public Law 93-319
93rd Congress, H. R. 14368
June 22, 1974

An Act

88 STAT. 246

To provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Energy Supply and Environmental Coordination Act of 1974. 15 USC 791 note.

SECTION 1. SHORT TITLE; PURPOSE.

(a) This Act, including the following table of contents, may be cited as the "Energy Supply and Environmental Coordination Act of 1974".

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(b) The purposes of this Act are (1) to provide for a means to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment, and (2) to provide requirements for reports respecting energy resources. 15 USC 791.

SEC. 2. COAL CONVERSION AND ALLOCATION. 15 USC 792.

(a) The Federal Energy Administrator—

(1) shall, by order, prohibit any powerplant, and

(2) may, by order, prohibit any major fuel burning installation, other than a powerplant,

Powerplant and fuel burning installations.

from burning natural gas or petroleum products as its primary energy source, if the Federal Energy Administrator determines such powerplant or installation on the date of enactment of this Act has the capability and necessary plant equipment to burn coal, and if the requirements of subsection (b) are met.

(b) The requirements referred to in subsection (a) are as follows:

(1) An order under subsection (a) may not be issued with respect to a powerplant or installation unless the Federal Energy Administrator finds (A) that the burning of coal by such plant or installation, in lieu of petroleum products or natural gas, is practicable and consistent with the purposes of this Act, (B) that coal and coal transportation facilities will be available during the period the order is in effect, and (C) in the case of a powerplant, that the prohibition under subsection (a) will not impair the reliability of service in the area served by such plant. Such an order shall be rescinded or modified to the extent the Federal Energy Administrator determines that any requirement described in subparagraph (A), (B), or (C) of this paragraph is no longer met; and such an order may at any time be modified if the Federal Energy Administrator determines that such order, as modified, complies with the requirements of this section.

Public notice.

(2)(A) Before issuing an order under subsection (a) which is applicable to a powerplant or installation for a period ending on or before June 30, 1975, the Federal Energy Administrator (i) shall give notice to the public and afford interested persons an opportunity for written presentations of data, views, and arguments, (ii) shall consult with the Administrator of the Environmental Protection Agency, and (iii) shall take into account the likelihood that the powerplant or installation will be permitted to burn coal after June 30, 1975.

(B) An order described in subparagraph (A) of this paragraph shall not become effective until the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 119(d)(1)(A) of such Act is the earliest date that such plant or installation will be able to comply with the air pollution requirements which will be applicable to it. Such order shall not be effective for any period certified by the Administrator of the Environmental Protection Agency pursuant to section 119(d)(3)(B) of such Act.

(3)(A) Before issuing an order under subsection (a) which is applicable to a powerplant or installation after June 30, 1975 (or modifying an order to which paragraph (2) applies, so as to apply such order to a powerplant or installation after such date), the Federal Energy Administrator shall give notice to the public and afford interested persons an opportunity for oral and written presentations of data, views, and arguments.

(B) An order (or modification thereof) described in subparagraph (A) of this paragraph shall not become effective until (i) the Administrator of the Environmental Protection Agency notifies the Federal Energy Administrator under section 119(d)(1)(B) of the Clean Air Act that such plant or installation will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under section 119(c) of such Act, or (ii) if such notification is not given, the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 119(d)(1)(B) of such Act is the earliest date that such plant or installation will be able to comply with all applicable requirements of such section 119. Such order (or modification) shall not be effective during any period certified by the Administrator of the Environmental Protection Agency under section 119(d)(3)(B) of such Act.

Post, p. 248.

Powerplant, construction design.

(c) The Federal Energy Administrator may require that any powerplant in the early planning process (other than a combustion gas turbine or combined cycle unit) be designed and constructed so as to be capable of using coal as its primary energy source. No powerplant may be required under this subsection to be so designed and constructed, if the Administrator determines that (1) to do so is likely to result in an impairment of reliability or adequacy of service, or (2) an adequate and reliable supply of coal is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Federal Energy Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner to recover any

capital investment made as a result of any requirement imposed under this subsection.

(d) The Federal Energy Administrator may, by rule or order, allocate coal (1) to any powerplant or major fuel-burning installation to which an order under subsection (a) has been issued, or (2) to any other person to the extent necessary to carry out the purposes of this Act.

(e) For purposes of this section:

(1) The term "powerplant" means a fossil-fuel fired electric generating unit which produces electric power for purposes of sale or exchange. "Powerplant."

(2) The term "coal" includes coal derivatives. "Coal."

(f)(1) Authority to issue orders or rules under subsections (a) through (d) of this section shall expire at midnight, June 30, 1975. Such a rule or order may take effect at any time before January 1, 1979. Expiration and effective dates.

(2) Authority to amend, repeal, rescind, modify, or enforce such rules or orders shall expire at midnight, December 31, 1978; but the expiration of such authority shall not affect any administrative or judicial proceeding which relates to any act or omission which occurred prior to January 1, 1979.

SEC. 3. SUSPENSION AUTHORITY.

Title I of the Clean Air Act is amended by adding at the end thereof the following new section: 81 Stat. 485. 42 USC 1857.

"ENERGY-RELATED AUTHORITY

"SEC. 119. (a) For purposes of this section: Definitions. 42 USC 1857c-10.

"(1) The term 'stationary source fuel or emission limitation' means any emission limitation, schedule or timetable of compliance, or other requirement, which is prescribed under this Act (other than this section, or section 111(b), 112, or 303) or contained in an applicable implementation plan (other than a requirement imposed under authority described in section 110(a)(2)(F)(v)), and which limits, or is designed to limit, stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic.

"(2) The term 'air pollution requirement' means any emission limitation, schedule or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including this Act (except for any requirement prescribed under subsection (c) or (d) of this section, section 110(a)(2)(F)(v), or section 303), and which limits stationary source emissions resulting from combustion of fuels (including a prohibition on, or specfication of, the use of any fuel of any type, grade, or pollution characteristic).

"(3) The terms 'stationary source' and 'source' have the same meaning as the term 'stationary source' has under section 111(a)(3); except that such terms include any owner or operator (as defined in section 111(a)(5)) of such source.

"(4) The term 'coal' includes coal derivatives.

"(5) The term 'primary standard condition' means a limitation, requirement, or other measure, prescribed by the Administrator under subsection (d)(2)(A) of this section.

"(6) The term 'regional limitation' means the requirement of subsection (c)(2)(D) of this section.

Temporary suspension.

"(b)(1)(A) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before June 30, 1975, temporarily suspend any stationary source fuel or emission limitation as it applies to any person—

"(i) if the Administrator finds that such person will be unable to comply with any such limitation during such period solely because of unavailability of types or amounts of fuels (unless such unavailability results from an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974), or

"(ii) if such person is a source which is described in subsection (c)(1)(A) or (B) of this section and which has converted to coal, and the Administrator finds that the source will be able to comply during the period of the suspension with all primary standard conditions which will be applicable to such source.

Any suspension under this paragraph, the imposition of any interim requirement on which such suspension is conditioned under paragraph (3) of this subsection, and the imposition of any primary standard condition which relates to such suspension, shall be exempted from any procedural requirements set forth in this Act or in any other provision of Federal, State, or local law; except as provided in subparagraph (B) of this paragraph.

Public notice.

"(B) The Administrator shall give notice to the public and afford interested persons an opportunity for written and oral presentations of data, views, and arguments prior to issuing a suspension under subparagraph (A), or denying an application for such a suspension, unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In any case, before issuing such a suspension, he shall give actual notice to the Governor of the State in which the affected source or sources are located, and to appropriate local governmental officials (as determined by the Administrator). The issuing or denial of such a suspension, the imposition of an interim requirement, and the imposition of any primary standard condition shall be subject to judicial review only on the grounds specified in paragraph (2)(B), (2)(C), or (2)(D), of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304(a)(2) or 307(b) and (c) of this Act.

Publication in Federal Register.
Notice to State Governor and local officials.
Judicial review.
80 Stat. 393.
84 Stat. 1705.
42 USC 1857h-2, 1857h-5.

"(2) In issuing any suspension under paragraph (1), the Administrator is authorized to act on his own motion or upon application by any person (including a public officer or public agency).

Interim requirements, compliance.

"(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the persons receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and

(C) in the case of a suspension under paragraph (1)(A)(i), requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available (as determined by the Administrator) to such person.

"(c)(1) Except as provided in paragraph (2) of this subsection, the Administrator shall issue a compliance date extension to any fuel-burning stationary source— Compliance date, extension.

"(A) which is prohibited from using petroleum products or natural gas by reason of an order which is in effect under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or

"(B) which the Administrator determines began conversion to the use of coal as its primary energy source during the period beginning on September 15, 1973, and ending on March 15, 1974, and which, on or after September 15, 1973, converts to the use of coal as its primary energy source. If a compliance date extension is issued to a source, such source shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source, except as provided in subsection (d)(3). For purposes of this paragraph, the term 'began conversion' means action by the source during the period beginning on September 15, 1973, and ending on March 15, 1974 (such as entering into a contract binding on such source for obtaining coal, or equipment or facilities to burn coal; expanding substantial sums to permit such source to burn coal; or applying for an air pollution variance to enable such source to burn coal) which the Administrator finds evidences a decision (made prior to March 15, 1974) to convert to burning coal as a result of the unavailability of an adequate supply of fuels required for compliance with the applicable implementation plan, and a good faith effort to expeditiously carry out such decision. "Began conversion."

"(2) (A) A compliance date extension under paragraph (1) of this subsection may be issued to a source only if— Conditions.

(i) the Administrator finds that such source will not be able to burn coal which is available to such source in compliance with all applicable air pollution requirements without a compliance date extension,

(ii) the Administrator finds that the source will be able during the period of the compliance date extension to comply with all the primary standard conditions which are required under subsection (d)(2) to be applicable to such source, and with the regional limitation if applicable to such source, and

(iii) the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved.

A plan submitted under clause (iii) of the preceding sentence shall be approved only if it meets the requirements of regulations prescribed under subparagraph (B). The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

"(B) Not later than 90 days after the date of enactment of this section, the Administrator shall prescribe regulations requiring that any source to which a compliance date extension applies submit and obtain approval of its means for and schedule of compliance with the require- Regulations. Compliance schedule.

ments of subparagraph (C) of this paragraph. Such regulations shall include requirements that such schedules shall include dates by which any such source must—

Contracts, approval.

"(i) enter into contracts (or other obligations enforceable against such source) which the Administrator has approved as being adequate to provide for obtaining a long-term supply of coal which enables such source to achieve the emission reduction required by subparagraph (C), or

"(ii) if coal which enables such source to achieve such emission reduction is not available to such source, enter into contracts (or other obligations enforceable against such source) which the Administrator has approved as being adequate to provide for obtaining (I) a long-term supply of other coal, and (II) continuous emission reduction systems necessary to permit such source to burn such coal, and to achieve the degree of emission reduction required by subparagraph (C).

Regulations under this subparagraph shall provide that contracts or other obligations required to be approved under this subparagraph must be approved before they are entered into (except that a contract or obligation which was entered into before the date of enactment of this section may be approved after such date).

Emmission reduction, requirements.

"(C) Regulations under subparagraph (B) shall require that the source achieve the most stringent degree of emission reduction that such source would have been required to achieve under the applicable implementation plan which was in effect on the date of submittal (under subparagraph (B) of this paragraph) of the means for and schedule of compliance (or if no applicable implementation plan was in effect on such date, under the first applicable implementation plan which takes effect after such date). Such degree of emission reduction shall be achieved as soon as practicable, but not later than December 31, 1978; except that, in the case of a source for which a continuous emission reduction system is required for sulfur-related emissions, reduction of such emissions shall be achieved on a date designated by the Administrator (but not later than January 1, 1979). Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable, including requirements described in subparagraphs (A) and (B) of subsection (b)(3) and requirements to file progress reports.

Progress reports.

"(D) A source which is issued a compliance date extension under this subsection, and which is located in an air quality control region in which a national primary ambient air quality standard for an air pollutant is not being met, may not emit such pollutant in amounts which exceed any emission limitation (and may not violate any other requirement) which applies to such source, under the applicable implementation plan for such pollutant. For purposes of this subparagraph, applicability of any such limitation or requirement to a source shall be determined without regard to this subsection or subsection (b).

"(3) A source to which this subsection applies may, upon the expiration of a compliance date extension, receive a one-year postponement of the application of any requirement of an applicable implementation plan under the conditions and in the manner provided in section 110(f).

"(4) The Administrator shall give notice to the public and afford an opportunity for oral and written presentations of data, views, and arguments before issuing any compliance date extension, prescribing any regulation under paragraph (2) of this subsection, making any finding under paragraph (2)(A) of this subsection, imposing any requirement on a source pursuant to paragraph (2) or any regulation thereunder, prescribing a primary standard condition under subsection (d)(2) which applies to a source to which an extension is issued under this subsection, or acting on any petition under subsection (d)(2)(C). Public notice.

"(d)(1)(A) Whenever the Federal Energy Administrator issues an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 which will not apply after June 30, 1975, the Administrator of the Environmental Protection Agency shall certify to him—

"(i) in the case of a source to which no suspension will be issued under subsection (b), the earliest date on which such source will be able to burn coal and to comply with all applicable air pollution requirements, or

"(ii) in the case of a source to which a suspension will be issued under subsection (b) of this section, the date determined under paragraph (2)(B) of this subsection.

"(B) Whenever the Federal Energy Administrator issues an order under section 2(a) of such Act which will apply after June 30, 1975, the Administrator of the Environmental Protection Agency shall notify him if such source will be able, on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under subsection (c). If such notification is not given—

"(i) in the case of a source which is eligible for a compliance date extension under subsection (c), the Administrator of the Environmental Protection Agency shall certify to the Federal Energy Administrator the date determined under paragraph (2)(B) of this subsection, and

"(ii) in the case of a source which is not eligible for such an extension, the Administrator of the Environmental Protection Agency shall certify to the Federal Energy Administrator the earliest date on which the source will be able to burn coal and to comply with all applicable air pollution requirements.

"(2)(A) The Administrator of the Environmental Protection Agency, after consultation with appropriate States, shall prescribe (and may from time to time, after such consultation, modify) emission limitations, requirements respecting pollution characteristics of coal, or other enforceable measures for control of emissions, for each source to which a suspension under subsection (b)(1)(A)(ii) will apply, and for each source to which a compliance date extension under subsection (c)(1) will apply. Such limitations, requirements, and measures shall be those which he determines must be complied with by the source in order to assure (throughout the period that the suspension or extension will be in effect) that the burning of coal by such source will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard for such pollutant. Emission limitations.

"(B) Whenever the Administrator prescribes a limitation, requirement, or measure under subparagraph (A) of this paragraph with respect to a source, he shall determine the earliest date on which such source will be able to comply with such limitation, requirement, or measure, and with any regional limitation applicable to such source.

Emission limitations, petition for modification.

"(C) An air pollution control agency may petition the Administrator (A) to modify any limitation, requirement, or other measure under this paragraph so as to assure compliance with the requirements of this paragraph, or (B) to issue to the Federal Energy Administration the certification described in paragraph (3)(B) on the grounds described in clause (iii) thereof. The Administrator shall take the action requested in the petition, or deny the petition, within 90 days after the date of receipt of the petition.

Compliance.

"(3)(A) If the Administrator determines that a source to which a suspension under subsection (b)(1)(A)(ii) or to which a compliance date extension under subsection (c)(1) applies is not in compliance with any primary standard condition, or that a source to which a compliance date extension applies is not in compliance with a regional limitation applicable to it, he shall (except as provided in subparagraph (B)) either—

"(i) enforce compliance with such condition or limitation under section 113, or

Public notice.

"(ii) (after notice to the public and affording an opportunity for interested persons to present data, views, and arguments, including oral presentations, to the extent practicable) revoke such suspension or compliance date extension.

"(B) If the Administrator finds that for any period—

"(i) a source, to which an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 applies, will be unable to comply with a primary standard condition or regional limitation,

"(ii) such a source will not be in compliance with such a condition or limitation, but such condition or limitation cannot be enforced because of a court order restraining its enforcement, or

"(iii) the burning of coal by such a source will result in an increase in emissions of any air pollutant for which national ambient air quality standards have not been promulgated (or an air pollutant which is transformed in the atmosphere into an air pollutant for which such a standard has not been promulgated), and that such increase may cause (or materially contribute to) a significant risk to public health,

he shall notify the Federal Energy Administrator of his finding and certify the period for which such order under such section 2(a) shall not be in effect with respect to such source. Subject to the conditions of the preceding sentence, such certification may be modified from time to time. For purposes of this subsection, subsection (c), and section 2 (a) or (b) of the Energy Supply and Environmental Coordination Act of 1974, a source shall be considered unable to comply with an air pollution requirement (including a primary standard condition or regional limitation) only if necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time.

"(4) Nothing in this Act shall prohibit a State, political subdivision of a State, or agency or instrumentality of either, from enforcing any primary standard condition or regional limitation.

"(5) A conversion to coal (A) to which a suspension under subsection (b) or a compliance date extension under subsection (c) applies or (B) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 shall not be deemed to be a modification for purposes of section 111(a) (2) and (4) of this Act.

Continuous emission reduction systems, manufacturing priorities, rules.

"(e) The Administrator may, by rule, establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out subsection (c) shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to sources in air quality control regions in which national primary ambient air quality standards have not been achieved. No rule under this subsection may impair the obligation of any contract entered into before the date of enactment of this section. To the extent necessary to carry out this section, the Administrator may prohibit any State or political subdivision of a State, or an agency or instrumentality of either, from requiring any person to use a continuous emission reduction system for which priorities have been established under this subsection, except in accordance with such priorities.

"(f) No State, political subdivision of a State, or agency or instrumentality of either, may require any person to whom a suspension has been issued under subsection (b) (1) to use any fuel the unavailability of which is the basis of such person's suspension (except that this subsection shall not apply to requirements identical to Federal requirements under subsection (b) (3) or subsection (d) (2)).

Unlawful acts.

"(g) (1) It shall be unlawful for any person to whom a suspension has been issued under subsection (b) (1) to violate any requirement on which the suspension is conditioned pursuant to subsection (b) (3) or any primary standard condition applicable to him.

"(2) It shall be unlawful for any person to fail to comply with any requirement under subsection (c), or any regulation, plan, or schedule thereunder (including a primary standard condition or regional limitation), which is applicable to such person.

"(3) It shall be unlawful for any person to violate any rule under subsection (e).

"(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i) (3).

"(h) Nothing in this section shall affect the power of the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act. 84 Stat. 1705. 42 USC 1857h-1.

Electric generating powerplants, cessation of operation, postponement.

"(i) (1) In order to reduce the likelihood of early phaseout of existing electric generating powerplants, any electric generating powerplant (A) which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on January 1, 1974) of the owner or operator of such plant, (B) for which a certification to that effect has been filed by the owner or operator of the plant with the Environmental Protection Agency and the Federal Power Commission, and (C) for which such Commission has determined that

the certification has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single one-year postponement as provided in paragraph (2).

"(2) Prior to the date on which any powerplant eligible under paragraph (1) is required to comply with any requirement of an applicable implementation plan, such plant may apply (with the concurrence of the Governor of the State in which such plant is located) to the Administrator to postpone the applicability of such requirement to such plant for not more than one year. If the Administrator determines, after considering the risk to public health and welfare which may be associated with a postponement, that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increases to pay for the costs of such compliance, and other appropriate factors, then the Administrator shall grant a postponement of any such requirement.

"(3) The Administrator shall, as a condition of any postponement under paragraph (2), prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph (2).

Public notice.

"(j) (1) The Administrator may, after public notice and opportunity for presentation of data, views, and arguments in accordance with section 553 of title 5, United States Code, and after consultation with the Federal Energy Administrator, designate persons with respect to whom fuel exchange requirements should be imposed under paragraph (2) of this subsection. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any suspension under subsection (b) of this section or conversion to coal to which subsection (c) applies or of any allocation under section 2(d) of the Energy Supply and Environmental Coordination Act of 1974 or under the Emergency Petroleum Allocation Act of 1973.

80 Stat. 383.

87 Stat. 627.

15 USC 751 note.

"(2) The Federal Energy Administrator shall exercise his authority under section 2(d) of the Energy Supply and Environmental Coordination Act of 1974 and under the Emergency Petroleum Allocation Act of 1973 with respect to persons designated by the Administrator of the Environmental Protection Agency under paragraph (1) in order to require the exchange of any fuel subject to allocation under such Acts effective no later than forty-five days after the date of such designation, unless the Federal Energy Administrator determines, after consultation with the Administrator of the Environmental Protection Agency, that the costs or consumption of fuel, resulting from requiring such exchange, will be excessive.

Study; report to Congress.

"(k) (1) The Administrator shall study, and report to Congress not later than six months after the date of enactment of this section, with respect to—

"(A) the present and projected impact of fuel shortages and fuel allocation programs on the program under this Act;

"(B) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduc-

tion systems would have on the total environment and on supplies of fuel and electricity;

"(C) the number of sources and locations which must use such technology based on projected fuel availability data;

"(D) a priority schedule for installation of continuous emission reduction technology, based on public health or air quality;

"(E) evaluation of availability of technology to burn municipal solid waste in electric powerplants or other major fuel burning installations, including time schedules, priorities, analysis of pollutants which may be emitted (including those for which national ambient air quality standards have not been promulgated), and a comparison of health benefits and detriments from burning solid waste and of economic costs;

"(F) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time for attainment prescribed in this Act, including associated considerations of cost, time for attainment, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

"(G) proposed priorities, for continuous emission reduction systems which do not produce solid waste, for sources which are least able to handle solid waste byproducts of such systems;

"(H) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentrations of sulfur dioxide in the ambient air; and

"(I) steps taken pursuant to authority of section 110(a)(3)(B) of this Act.

"(2) Beginning January 1, 1975, the Administrator shall publish in the Federal Register, at no less than one-hundred-and-eighty-day intervals, the following: Publication in Federal Register.

"(A) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (c) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsection.

"(B) Up-to-date findings on the impact of this section upon—

"(i) applicable implementation plans, and

"(ii) ambient air quality."

SEC. 4. IMPLEMENTATION PLAN REVISIONS.

(a) Section 110(a) of the Clean Air Act is amended in paragraph (3) by inserting "(A)" after "(3)" and by adding at the end thereof the following new subparagraph: 84 Stat. 1680. 42 USC 1857c-5.

"(B) As soon as practicable, the Administrator shall, consistent with the purposes of this Act and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision Review. Report to State. Revised plans, submittal.

Public notice and hearing opportunity.

which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission."

84 Stat. 1680. 42 USC 1857c-5.

(b) Subsection (c) of section 110 of the Clean Air Act is amended by inserting "(1)" after "(c)"; by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively, and by adding at the end thereof the following new paragraph:

Transportation regulations study. Report, submittal to congressional committees.

"(2)(A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than three months after date of enactment of this paragraph on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.

Parking surcharge.

"(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

Regulations, suspension authority.

"(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

"(D) For purposes of this paragraph— Definitions.

"(i) The term 'parking surcharge regulation' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

"(ii) The term 'management of parking supply' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

"(iii) The term 'preferential bus/carpool lane' shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

"(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after the date of enactment of this paragraph by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice." Promulgation. Public hearing; notice.

SEC. 5. MOTOR VEHICLE EMISSIONS.

(a) Section 202(b)(1)(A) of the Clean Air Act is amended by striking out "1975" and inserting in lieu thereof "1977"; and by inserting after "(A)" the following: "The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5)(A) of this subsection for light-duty vehicles and engines manufactured during model year 1975." 84 Stat. 1680. 42 USC 1857f-1. Model years 1975 and 1976, standards.

(b) Section 202(b)(1)(B) of such Act is amended by striking out "1976" and inserting in lieu thereof "1978"; and by inserting after "(B)" the following: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile."

(c) Section 202(b)(5)(A) of such Act is amended to read as follows:

"(5)(A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within sixty days. If he determines, in accordance Model year 1977, suspension request.

with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977."

Repeal.
84 Stat. 1691.
42 USC 1857f.

(d) Section 202(b)(5)(B) of the Clean Air Act is repealed and the following subparagraphs redesignated accordingly.

SEC. 6. CONFORMING AMENDMENTS.

84 Stat. 1686; 85 Stat. 464.
42 USC 1857c-8.

(a)(1) Section 113(a)(3) of the Clean Air Act is amended by striking out "or" before "112(c)", by inserting a comma in lieu thereof, and by inserting after "hazardous emissions)" the following: ", or 119(g) (relating to energy-related authorities)".

(2) Section 113(b)(3) of such Act is amended by striking out "or 112(c)" and inserting in lieu thereof ", 112(c), or 119(g)".

(3) Section 113(c)(1)(C) of such Act is amended by striking out "or section 112(c)" and inserting in lieu thereof ", section 112(c), or section 119(g)".

42 USC 1857c-9.

(4) Section 114(a) of such Act is amended by inserting "119 or" before "303".

42 USC 1857d-1.

(b) Section 116 of the Clean Air Act is amended by inserting "119 (c), (e), and (f)," before "209".

42 USC 1857h-5.

(c)(1) The second sentence of subsection (b) of section 307 of such Act is amended by inserting ", or his action under section 119(c)(2)(A), (B), or (C) or under regulations thereunder," after "111(d)".

(2) The third sentence of such subsection is amended by striking out "or approval" and inserting in lieu thereof ", approval, or action".

15 USC 793.

SEC. 7. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT.

87 Stat. 627.
15 USC 751 note.

(a) Any allocation program provided for in section 2 of this Act or in the Emergency Petroleum Allocation Act of 1973, shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the United States designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

Study.

Ante, p. 248.

Appropriation.

(b) In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal to which section 119 of the Clean Air Act applies, the Department of Health, Education, and Welfare shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

81 Stat. 485.
42 USC 1857.

(c)(1) No action taken under the Clean Air Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856).

42 USC 4321 note.

(2) No action under section 2 of this Act for a period of one year after initiation of such action shall be deemed a major Federal action significantly affecting the quality of the human environment within

the meaning of the National Environmental Policy Act of 1969. However, before any action under section 2 of this Act that has a significant impact on the environment is taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under section 2 of this Act which will be in effect for more than a one-year period or any action to extend an action taken under section 2 of this Act to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act, notwithstanding any other provision of this Act.

83 Stat. 852.

Environment evaluation, availability. 83 Stat. 853. 42 USC 4332.

Hearing.

(d) In order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 (83 Stat. 856) for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

Hydroelectric energy facilities, construction.

16 USC 824a note.

42 USC 4332.

SEC. 8. ENERGY CONSERVATION STUDY.

15 USC 794.

(a) The Federal Energy Administrator shall conduct a study on potential methods of energy conservation and, not later than six months after the date of enactment of this Act, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

Report to Congress.

(1) the energy conservation potential of restricting exports of fuels or energy-intensive products or goods, including an analysis of balance-of-payments and foreign relations implications of any such restrictions;

(2) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource recovery in order to reduce energy demand, including the economic costs and fuel consumption tradeoff which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials; and

(3) means for incentives or disincentives to increase efficiency of industrial use of energy.

(b) Within ninety days of the date of enactment of this Act, the Secretary of Transportation, after consultation with the Federal Energy Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public

Emergency Mass Transportation Assistance Plan, submittal to Congress.

mass transportation systems and encouraging increased ridership as alternatives to automobile travel.

(c) Such plan shall include, but shall not be limited to—

Grants.

(1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the provision of expanded mass transportation service in urban areas;

(2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under section 142(a)(2) of title 23, United States Code (the "Federal Aid Highway Act of 1973"), for the purpose of providing additional capacity for and encouraging increased use of public mass transportation systems;

87 Stat. 259.

Fares.

(3) recommendations for a program of demonstration projects to determine the feasibility of fare-free and low-fare urban mass transportation systems, including reduced rates for elderly and handicapped persons during nonpeak hours of transportation;

Fringe parking.

(4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;

Tax incentives.

(5) recommendations on the feasibility of providing tax incentives for persons who use public mass transportation systems.

15 USC 795.

SEC. 9. REPORT.

Report to Congress.

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 3 through 7 of this Act.

SEC. 10. FUEL ECONOMY STUDY.

81 Stat. 499; 84 Stat. 1694. 42 USC 1857f-1.

Title II of the Clean Air Act is amended by redesignating section 213 as section 214 and by adding the following new section:

"FUEL ECONOMY IMPROVEMENT FROM NEW MOTOR VEHICLES

42 USC 1857f-6f.

Report to congressional committees.

"SEC. 213. (a)(1) The Administrator and the Secretary of Transportation shall conduct a joint study, and shall report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committees on Public Works and Commerce of the United States Senate within one hundred and twenty days following the date of enactment of this section, concerning the practicability of establishing a fuel economy improvement standard of 20 per centum for new motor vehicles manufactured during and after model year 1980. Such study and report shall include, but not be limited to, the technological problems of meeting any such standard, including the leadtime involved; the test procedures required to determine compliance; the economic costs associated with such standard, including any beneficial economic impact; the various means of enforcing such standard; the effect on consumption of natural resources, including energy consumed; and the impact of applicable safety and emission standards. In the course of performing such study, the Administrator and the Secretary of Transportation shall utilize the research previously performed in the Department of Transportation, and the Administrator and the Secretary shall consult with the Federal Energy

Administrator, the Chairman of the Council on Environmental Quality, and the Secretary of the Treasury. The Office of Management and Budget may review such report before its submission to such committees of the Congress, but such Office may not revise the report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting such report. In connection with such study, the Administrator may utilize the authority provided in section 307(a) of this Act to obtain necessary information. OMB review and comments. 84 Stat. 1707; 85 Stat. 464.

"(2) For the purpose of this section, the term 'fuel economy improvement standard' means a requirement of a percentage increase in the number of miles of transportation provided by a manufacturer's entire annual production of new motor vehicles per unit of fuel consumed, as determined for each manufacturer in accordance with test procedures established by the Administrator pursuant to this Act. Such term shall not include any requirement for any design standard or any other requirement specifying or otherwise limiting the manufacturer's discretion in deciding how to comply with the fuel economy improvement standard by any lawful means." 42 USC 1857h-5. "Fuel economy improvement standard."

SEC. 11. REPORTING OF ENERGY INFORMATION. 15 USC 796.

(a) For the purpose of assuring that the Federal Energy Administrator, the Congress, the States, and the public have access to and are able to obtain reliable energy information, the Federal Energy Administrator shall request, acquire, and collect such energy information as he determines to be necessary to assist in the formulation of energy policy or to carry out the purposes of this Act or the Emergency Petroleum Allocation Act of 1973. The Federal Energy Administrator shall promptly promulgate rules pursuant to subsection (b)(1)(A) of this section requiring reports of such information to be submitted to the Federal Energy Administrator at least every ninety calendar days. 87 Stat. 627. 15 USC 751 note. Rules.

(b)(1) In order to obtain energy information for the purpose of carrying out the provisions of subsection (a), the Federal Energy Administrator is authorized—

(A) to require, by rule, any person who is engaged in the production, processing, refining, transportation by pipeline, or distribution (at other than the retail level) of energy resources to submit reports;

(B) to sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(C) to require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information; and such answers or other submissions shall be made within such reasonable period, and under oath or otherwise, as the Federal Energy Administrator may determine; and

(D) to administer oaths.

(2) For the purpose of verifying the accuracy of any energy information requested, acquired, or collected by the Federal Energy Administrator, the Federal Energy Administrator, or any officer or Accuracy, verification.

employer duly designated by him, upon presenting appropriate credentials and a written notice from the Federal Energy Administrator to the owner, operator, or agent in charge, may—

(A) enter, at reasonable times, any business premise or facility; and

(B) inspect, at reasonable times and in a reasonable manner, any such premise or facility, inventory and sample any stock of energy resources therein, and examine and copy books, records, papers, or other documents, relating to any such energy information.

Compliance order.

(3) Any United States district court within the jurisdiction of which any inquiry is carried on may, upon petition by the Attorney General at the request of the Federal Energy Administrator, in the case of refusal to obey a subpena or order of the Federal Energy Administrator issued under this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c)(1) The Federal Energy Administrator shall exercise the authorities granted to him under subsection (b)(1)(A) to develop, within thirty days after the date of enactment of this Act, as full and accurate a measure as is reasonably practicable of—

(A) domestic reserves and production;

(B) imports; and

(C) inventories;

of crude oil, residual fuel oil, refined petroleum products, natural gas, and coal.

Energy information, quarterly report.

(2) For each calendar quarter beginning with the first complete calendar quarter following the date of enactment of this Act, the Federal Energy Administrator shall develop and publish a report containing the following energy information:

(A) Imports of crude oil, residual fuel oil, refined petroleum products (by product), natural gas, and coal, identifying (with respect to each such oil, product, gas, or coal) country of origin, arrival point, quantity received, and the geographic distribution within the United States.

(B) Domestic reserves and production of crude oil, natural gas, and coal.

(C) Refinery activities, showing for each refinery within the United States (i) the amounts of crude oil run by such refinery, (ii) amounts of crude oil allocated to such refinery pursuant to regulations and orders of the Federal Energy Administrator, his delegate pursuant to the Emergency Petroleum Allocation Act of 1973, or any other person authorized by law to issue regulations and orders with respect to the allocation of crude oil, (iii) percentage of refinery capacity utilized, and (iv) amounts of products refined from such crude oil.

(D) Report of inventories, on a national, regional, and State-by-State basis—

(i) of various refined petroleum products, relating refiners, refineries, suppliers to refiners, share of market, and allocation fractions;

(ii) of various refined petroleum products, previous quarter deliveries and anticipated three-month available supplies;

(iii) of anticipated monthly supply of refined petroleum products, amount of set-aside for assignment by the State, anticipated State requirements, excess or shortfall of supply, and allocation fraction of base year; and

(iv) of LPG by State and owner: quantities stored, and existing capacities, and previous priorities on types, inventories of suppliers, and changes in supplier inventories.

Confidential information.

(d) Upon a showing satisfactory to the Federal Energy Administrator by any person that any energy information obtained under this section from such person would, if made public, divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person, such information, or portion thereof, shall be confidential in accordance with the provisions of section 1905 of title 18, United States Code; except that such information, or part thereof, shall not be deemed confidential for purposes of disclosure, upon request, to (1) any delegate of the Federal Energy Administrator for the purpose of carrying out this Act and the Emergency Petroleum Allocation Act of 1973, (2) the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the General Accounting Office, when necessary to carry out those agencies' duties and responsibilities under this and other statutes, and (3) the Congress, or any committee of Congress upon request of the Chairman.

62 Stat. 791.

87 Stat. 627.
15 USC 751 note.

Definitions.

(e) As used in this section:

(1) The term "energy information" includes (A) all information in whatever form on (i) fuel reserves, exploration, extraction, and energy resources (including petrochemical feedstocks) wherever located; (ii) production, distribution, and consumption of energy and fuels wherever carried on; and (B) matters relating to energy and fuels, such as corporate structure and proprietary relationships, costs, prices, capital investment, and assets, and other matters directly related thereto, wherever they exist.

(2) The term "person" means any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business, who directly or through other persons subject to their control does business in any part of the United States.

(3) The term "United States" when used in the geographical sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

Information, availability.

(f) Information obtained by the Administration under authority of this Act shall be available to the public in accordance with the provisions of section 552 of title 5, United States Code.

81 Stat. 54.

(g)(1) The authority contained in this section is in addition to, independent of, not limited by, and not in limitation of, any other authority of the Federal Energy Administrator.

Expiration date.

(2) The provisions of this section expire at midnight, June 30, 1975, but such expiration shall not affect any administrative or judicial proceeding which relates to any act or failure to act if such act or failure to act was not in compliance with the requirements and authorities of this section and occurred prior to midnight, June 30, 1975.

15 USC 797.

SEC. 12. ENFORCEMENT.

(a) It shall be unlawful for any person to violate any provision of section 2 (relating to coal conversion and allocation) or section 11 (relating to energy information) or to violate any rule, regulation, or order issued pursuant to any such provision.

Penalties.

(b) (1) Whoever violates any provision of subsection (a) shall be subject to a civil penalty of not more than $2,500 for each violation.

88 STAT. 264

88 STAT. 265

(2) Whoever willfully violates any provision of subsection (a) shall be fined not more than $5,000 for each violation.

(3) It shall be unlawful for any person to offer for sale or distribute in commerce any coal in violation of an order or regulation issued pursuant to section 2(d). Any person who knowingly and willfully violates this paragraph after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to section 2(d) shall be fined not more than $50,000, or imprisoned not more than six months, or both.

(4) Whenever it appears to the Federal Energy Administrator or any person authorized by the Federal Energy Administrator to exercise authority under this section 2 or section 11 of this Act that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of subsection (a) the Federal Energy Administrator or such person may request the Attorney General to bring a civil action to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. In such action, the court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by subsection (a).

(5) Any person suffering legal wrong because of any act or practice arising out of any violation of subsection (a) may bring a civil action for appropriate relief, including an action for a declaratory judgment or writ of injunction. United States district courts shall have jurisdiction of actions under this paragraph without regard to the amount in controversy. Nothing in this paragraph shall authorize any person to recover damages.

SEC. 13. EXTENSION OF CLEAN AIR ACT AUTHORIZATION.

87 Stat. 11.

42 USC 1857b-1.

(a) Section 104(c) of the Clean Air Act is amended by striking "and $150,000,000 for the fiscal year ending June 30, 1974" and inserting in lieu thereof ", $150,000,000 for the fiscal year ending June 30, 1974, and $150,000,000 for the fiscal year ending June 30, 1975."

42 USC 1857f-6e.

(b) Section 212(i) of such Act is amended by striking "three succeeding fiscal years." and inserting in lieu thereof "four succeeding fiscal years.".

42 USC 1857l.

(c) Section 316 of such Act is amended by striking "and $300,000,000 for the fiscal year ending June 30, 1974" and inserting in lieu thereof ", $300,000,000 for the fiscal year ending June 30, 1974, and $300,000,000 for the fiscal year ending June 30, 1975".

15 USC 798.

SEC. 14. DEFINITIONS.

81 Stat. 485; 84 Stat. 1676.

42 USC 1857.

(a) For purposes of this Act and the Clean Air Act the term "Federal Energy Administrator" means the Administrator of the Federal Energy Administration established by Federal Energy

Administration Act of 1974 (Public Law 93-275); except that until such Administrator takes office and after such Administration ceases to exist, such term means any officer of the United States designated as Federal Energy Administrator by the President for purposes of this Act and section 119 of the Clean Air Act. Ante, p. 96. Ante, p. 248.

(b) For purposes of this Act, the term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (as defined in section 3(5) of the Emergency Petroleum Allocation Act of 1973). 87 Stat. 628. 15 USC 752.

Approved June 22, 1974.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 93-1013 (Comm. on. Interstate and Foreign Commerce)
and No. 93-1085 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 120 (1974):
May 1, considered and passed House.
May 14, considered and passed Senate, amended.
June 11, House agreed to conference report.
June 12, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 10, No. 26:
June 26, Presidential statement.

PRESIDENT'S APPROVAL—ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT OF 1974

STATEMENT BY THE PRESIDENT UPON SIGNING THE BILL INTO LAW
JUNE 26, 1974

I have signed H.R. 14368, the Energy Supply and Environmental Coordination Act of 1974. This bill represents a first step by the Congress toward achieving a balance between our environmental requirements and our energy requirements. While the Congress has begun to address the complex problem of reconciling these two priorities, it must be clear that this step is only a beginning and that more remains to be done.

This bill provides two principal authorities. First, the bill amends the Clean Air Act by extending for up to 2 years the automotive emission standards that currently apply to 1975-model, light-duty vehicles and engines. This amendment will provide additional time for the development of emission control technology and permit manufacturers to focus attention on improving automobile fuel economy.

Second, the bill provides authority for a limited program to convert powerplants and other major fuel-burning installations from the use of petroleum products and natural gas to the use of coal. This authority represents a step in the right direction, but it does not provide a basis for the long term program of coal conversion necessary to achieve our goal of developing the capacity for energy self-sufficiency.

As I indicated to the Congress in my January 23, 1974, energy crisis message, the Clean Air Act has provided the basis for major improvements in air quality, and we must continue our progress toward even greater improvement. It has become clear, however, that certain requirements established by the act cannot be achieved within the deadlines allotted and others have unacceptable economic and social implications.

A thorough review of the Clean Air Act was undertaken by the appropriate executive branch agencies. Following that review, EPA Administrator Russell Train submitted proposed amendments to the Clean Air Act to the Congress on behalf of the administration.

Since the bill that I have signed deals in only a limited way with the problem of insuring that our environmental priorities and our energy needs are managed evenhandedly, I urge the Congress to review the administration's proposed amendments and to act quickly and favorably upon them.

[NOTE.—As enacted, the bill (H.R. 14368) is Public Law 93–319, approved June 22, 1974.]

CHAPTER 2

Conference Report and Debates on H.R. 14368

93D CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 93-1085

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT OF 1974

JUNE 6, 1974.—Ordered to be printed

Mr. STAGGERS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 14368]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 14368) to provide for means of dealing with energy shortages by requiring reports with respect to the energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE; PURPOSE.

(a) This Act, including the following table of contents, may be cited as the "Energy Supply and Environmental Coordination Act of 1974".

TABLE OF CONTENTS

(b) The purposes of this Act are (1) to provide for a means to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment, and (2) to provide requirements for reports respecting energy resources.

SEC. 2. COAL CONVERSION AND ALLOCATION.

(a) The Federal Energy Administrator—

(1) shall, by order, prohibit any powerplant, and

(2) may, by order, prohibit any major fuel burning installation, other than a powerplant,

from burning natural gas or petroleum products as its primary energy source, if the Federal Energy Administrator determines such powerplant or installation on the date of enactment of this Act has the capability and necessary plant equipment to burn coal, and if the requirements of subsection (b) are met.

(b) The requirements referred to in subsection (a) are as follows:

(1) An order under subsection (a) may not be issued with respect to a powerplant or instaliation unless the Federal Energy Administrator finds (A) that the burning of coal by such plant or installation, in lieu of petroleum products or natural gas, is practicable and consistent with the purposes of this Act, (B) that coal and coal transportation facilities will be available during the period the order is in effect, and (C) in the case of a powerplant, that the prohibition under subsection (a) will not impair the reliability of service in the area served by such plant. Such an order shall be rescinded or modified to the extent the Federal Energy Administrator determines that any requirement described in subparagraph (A), (B), or (C) of this paragraph is no longer met: and such an order may at any time be modified if the Federal Energy Administrator determines that such order, as modified, complies with the requirements of this section.

(2)(A) Before issuing an order under subsection (a) which is applicable to a powerplant or installation for a period ending on or before June 30, 1975, the Federal Energy Administrator (i) shall give notice to the public and afford interested persons an opportunity for written presentations of data, views, and arguments, (ii) shall consult with the Administrator of the Environmental Protection Agency, and (iii) shall take into account the likelihood that the powerplant or installation will be permitted to burn coal after June 30, 1975.

(B) An order described in subparagraph (A) of this paragraph shall not become effective until the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 119(d)(1)(A) of such Act is the earliest date that such plant or installation will be able to comply with the air pollution requirements which will be applicable to it. Such order shall not be effective for any period certified by the Administrator of the Environmental Protection Agency pursuant to section 119(d)(3)(B) of such Act.

(3)(A) Before issuing an order under subsection (a) which is applicable to a powerplant or installation after June 30, 1975 (or modifying an order to which paragraph (2) applies, so as to apply

such order to a powerplant or installation after such date), the Federal Energy Administrator shall give notice to the public and afford interested persons an opportunity for oral and written presentations of data, views, and arguments.

(B) An order (or modification thereof) described in subparagraph (A) of this paragraph shall not become effective until (i) the Administrator of the Environmental Protection Agency notifies the Federal Energy Administrator under section 119(d)(1)(B) of the Clean Air Act that such plant or installation will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under section 119(c) of such Act, or (ii) if such notification is not given, the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 119(d)(1)(B) of such Act is the earliest date that such plant or installation will be able to comply with all applicable requirements of such section 119. Such order (or modification) shall not be effective during any period certified by the Administrator of the Environmental Protection Agency under section 119(d)(3)(B) of such Act.

(c) The Federal Administrator may require that any powerplant in the early planning process (other than a combustion gas turbine or combined cycle unit) be designed and constructed so as to be capable of using coal as its primary energy source. No powerplant may be required under this subsection to be so designed and constructed, if the Administrator determines that (1) to do so is likely to result in an impairment of reliability or adequacy of service, or (2) an adequate and reliable supply of coal is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Federal Energy Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner to recover any capital investment made as a result of any requirement imposed under this subsection.

(d) The Federal Energy Administrator may, by rule or order, allocate coal (1) to any powerplant or major fuel-burning installation to which an order under subsection (a) has been issued, or (2) to any other person to the extent necessary to carry out the purposes of this Act.

(e) For purposes of this section:

(1) The term "powerplant" means a fossil-fuel fired electric generating unit which produces electric power for purposes of sale or exchange.

(2) The term "coal" includes coal derivatives.

(f)(1) Authority to issue orders or rules under subsections (a) through (d) of this section shall expire at midnight, June 30, 1975. Such a rule or order may take effect at any time before January 1, 1979.

(2) Authority to amend, repeal, rescind, modify, or enforce such rules or orders shall expire at midnight, December 31, 1978; but the expiration of such authority shall not affect any administrative or judicial proceeding which relates to any act or omission which occurred prior to January 1, 1979.

SEC. 3. SUSPENSION AUTHORITY.

Title I of the Clean Air Act is amended by adding at the end thereof the following new section:

"ENERGY-RELATED AUTHORITY

"SEC. 119. (a) *For purposes of this section:*

"(1) *The term 'stationary source fuel or emission limitation' means any emission limitation, schedule or timetable of compliance, or other requirement, which is prescribed under this Act (other than this section, or section 111(b), 112, or 303) or contained in an applicable implementation plan (other than a requirement imposed under authority described in section 110(a)(2)(F)(v)), and which limits, or is designed to limit, stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic.*

"(2) *The term 'air pollution requirement' means any emission limitation, schedule or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including this Act (except for any requirement prescribed under subsection (c) or (d) of this section, section 110(a)(2)(F)(v), or section 303), and which limits stationary source emissions resulting from combustion of fuels (including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic).*

"(3) *The terms 'stationary source' and 'source' have the same meaning as the term 'stationary source' has under section 111(a)(3); except that such terms include any owner or operator (as defined in section 111(a)(5)) of such source.*

"(4) *The term 'coal' includes coal derivatives.*

"(5) *The term 'primary standard condition' means a limitation, requirement, or other measure, prescribed by the Administrator under subsection (d)(2)(A) of this section.*

"(6) *The term 'regional limitation' means the requirement of subsection (c)(2)(D) of this section.*

"(b)(1)(A) *The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before June 30, 1975, temporarily suspend any stationary source fuel or emission limitation as it applies to any person—*

"(i) *if the Administrator finds that such person will be unable to comply with any such limitation during such period solely because of unavailability of types or amounts of fuels (unless such unavailability results from an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974), or*

"(ii) *if such person is a source which is described in subsection (c)(1)(A) or (B) of this section and which has converted to coal, and the Administrator finds that the source will be able to comply during the period of the suspension with all primary standard conditions which will be applicable to such source.*

Any suspension under this paragraph, the imposition of any interim requirement on which such suspension is conditioned under paragraph (3) of this subsection, and the imposition of any primary standard

condition which relates to such suspension, shall be exempted from any procedural requirements set forth in this Act or in any other provision of Federal, State, or local law; except as provided in subparagraph (B) of this paragraph.

"(B) The Administrator shall give notice to the public and afford interested persons an opportunity for written and oral presentations of data, views, and arguments prior to issuing a suspension under subparagraph (A), or denying an application for such a suspension, unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In any case, before issuing such a suspension, he shall give actual notice to the Governor of the State in which the affected source or sources are located, and to appropriate local governmental officials (as determined by the Administrator). The issuing or denial of such a suspension, the imposition of an interim requirement, and the imposition of any primary standard condition shall be subject to judicial review only on the grounds specified in paragraph (2)(B), (2)(C), or (2)(D), of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304(a)(2) or 307 (b) and (c) of this Act.

"(2) In issuing any suspension under paragraph (1), the Administrator is authorized to act on his own motion or upon application by any person (including a public officer or public agency).

"(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the persons receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and (C) in the case of a suspension under paragraph (1)(A)(i), requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available (as determined by the Administrator) to such person.

"(c)(1) Except as provided in paragraph (2) of this subsection, the Administrator shall issue a compliance date extension to any fuel-burning stationary source—

"(A) which is prohibited from using petroleum products or natural gas by reason of an order which is in effect under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or

"(B) which the Administrator determines began conversion to the use of coal as its primary energy source during the period beginning on September 15, 1973, and ending on March 15, 1974, and which, on or after September 15, 1973, converts to the use of coal as its primary energy source. If a compliance date extension is issued to a source, such source shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source, except as provided in subsection (d)(3). For purposes of this paragraph, the term 'began conversion' means action by the source during the period beginning on

September 15, 1973, and ending on March 15, 1974 (such as entering into a contract binding on such source for obtaining coal, or equipment or facilities to burn coal; expanding substantial sums to permit such source to burn coal; or applying for an air pollution variance to enable such source to burn coal) which the Administrator finds evidences a decision (made prior to March 15, 1974) to convert to burning coal as a result of the unavailability of an adequate supply of fuels required for compliance with the applicable implementation plan, and a good faith effort to expeditiously carry out such decision.

"(2)(A) A compliance date extension under paragraph (1) of this subsection may be issued to a source only if—

(i) the Administrator finds that such source will not be able to burn coal which is available to such source in compliance with all applicable air pollution requirements without a compliance date extension,

(ii) the Administrator finds that the source will be able during the period of the compliance date extension to comply with all the primary standard conditions which are required under subsection (d)(2) to be applicable to such source, and with the regional limitation if applicable to such source, and

(iii) the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved.

A plan submitted under clause (iii) of the preceding sentence shall be approved only if it meets the requirements of regulations prescribed under subparagraph (B). The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

"(B) Not later than 90 days after the date of enactment of this section, the Administrator shall prescribe regulations requiring that any source to which a compliance date extension applies submit and obtain approval of its means for and schedule of compliance with the requirements of subparagraph (C) of this paragraph. Such regulations shall include requirements that such schedules shall include dates by which any such source must—

"(i) enter into contracts (or other obligations enforceable against such source) which the Administrator has approved as being adequate to provide for obtaining a long-term supply of coal which enables such source to achieve the emission reduction required by subparagraph (C), or

"(ii) if coal which enables such source to achieve such emission reduction is not available to such source, enter into contracts (or other obligations enforceable against such source) which the Administrator has approved as being adequate to provide for obtaining (I) a long-term supply of other coal, and (II) continuous emission reduction systems necessary to permit such source to burn such coal and to achieve the degree of emission reduction required by subparagraph (C).

Regulations under this subparagraph shall provide that contracts or other obligations required to be approved under this subparagraph must be approved before they are entered into (except that a contract or obligation which was entered into before the date of enactment of this section may be approved after such date).

"(C) Regulations under subparagraph (B) shall require that the source achieve the most stringent degree of emission reduction that

such source would have been required to achieve under the applicable implementation plan which was in effect on the date of submittal (under subparagraph (B) of this paragraph) of the means for and schedule of compliance (or if no applicable implementation plan was in effect on such date, under the first applicable implementation plan which takes effect after such date). Such degree of emission reduction shall be achieved as soon as practicable, but not later than December 31, 1978; except that, in the case of a source for which a continuous emission reduction system is required for sulfur-related emissions, reduction of such emissions shall be achieved on a date designated by the Administrator (but not later than January 1, 1979). Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable, including requirements described in subparagraphs (A) and (B) of subsection (b) (3) and requirements to file progress reports.

"(D) A source which is issued a compliance date extension under this subsection, and which is located in an air quality control region in which a national primary ambient air quality standard for an air pollutant is not being met, may not emit such pollutant in amounts which exceed any emission limitation (and may not violate any other requirement) which applies to such source, under the applicable implementation plan for such pollutant. For purposes of this subparagraph, applicability of any such limitation or requirement to a source shall be determined without regard to this subsection or subsection (b).

"(3) A source to which this subsection applies may, upon the expiration of a compliance date extension, receive a one-year postponement of the application of any requirement of an applicable implementation plan under the conditions and in the manner provided in section 110(f).

"(4) The Administrator shall give notice to the public and afford an opportunity for oral and written presentations of data, views, and arguments before issuing any compliance date extension, prescribing any regulation under paragraph (2) of this subsection, making any finding under paragraph (2) (A) of this subsection, imposing any requirement on a source pursuant to paragraph (2) or any regulation thereunder, prescribing a primary standard condition under subsection (d) (2) which applies to a source to which an extension is issued under this subsection, or acting on any petition under subsection (d) (2) (C).

"(d) (1) (A) Whenever the Federal Energy Administrator issues an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 which will not apply after June 30, 1975, the Administrator of the Environmental Protection Agency shall certify to him—

"(i) in the case of a source to which no suspension will be issued under subsection (b), the earliest date on which such source will be able to burn coal and to comply with all applicable air pollution requirements, or

"(ii) in the case of a source to which a suspension will be issued under subsection (b) of this section, the date determined under paragraph (2) (B) of this subsection.

"(B) Whenever the Federal Energy Administrator issues an order under section 2(a) of such Act which will apply after June 30, 1975,

the Administrator of the Environmental Protection Agency shall notify him if such source will be able, on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under subsection (c).

If such notification is not given—

"(i) in the case of a source which is eligible for a compliance date extension under subsection (c), the Administrator of the Environmental Protection Agency shall certify to the Federal Energy Administrator the date determined under paragraph (2) (B) of this subsection, and

"(ii) in the case of a source which is not eligible for such an extension, the Administrator of the Environmental Protection Agency shall certify to the Federal Energy Administrator the earliest date on which the source will be able to burn coal and to comply with all applicable air pollution requirements.

"(2)(A) The Administrator of the Environmental Protection Agency, after consultation with appropriate States, shall prescribe (and may from time to time, after such consultation, modify) emission limitations, requirements respecting pollution characteristics of coal, or other enforceable measures for control of emissions, for each source to which a suspension under subsection (b)(1)(A)(ii) will apply, and for each source to which a compliance date extension under subsection (c)(1) will apply. Such limitations, requirements, and measures shall be those which he determines must be complied with by the source in order to assure (throughout the period that the suspension or extension will be in effect) that the burning of coal by such source will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard for such pollutant.

"(B) Whenever the Administrator prescribes a limitation, requirement, or measure under subparagraph (A) of this paragraph with respect to a source, he shall determine the earliest date on which such source will be able to comply with such limitation, requirement, or measure, and with any regional limitation applicable to such source.

"(C) An air pollution control agency may petition the Administrator (A) to modify any limitation, requirement, or other measure under this paragraph so as to assure compliance with the requirements of this paragraph, or (B) to issue to the Federal Energy Administration the certification described in paragraph (3)(B) on the grounds described in clause (iii) thereof. The Administrator shall take the action requested in the petition, or deny the petition, within 90 days after the date of receipt of the petition.

"(3)(A) If the Administrator determines that a source to which a suspension under subsection (b)(1)(A)(ii) or to which a compliance date extension under subsection (c)(1) applies is not in compliance with any primary standard condition, or that a source to which a compliance date extension applies is not in compliance with a regional limitation applicable to it, he shall (except as provided in subparagraph (B)) either—

"(i) enforce compliance with such condition or limitation under section 113, or

"(ii) (after notice to the public and affording an opportunity for interested persons to present data, views, and arguments, including oral presentations, to the extent practicable) revoke such suspension or compliance date extension.

"(B) If the Administrator finds that for any period—

"(i) a source, to which an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 applies, will be unable to comply with a primary standard condition or regional limitation,

"(ii) such a source will not be in compliance with such a condition or limitation, but such condition or limitation cannot be enforced because of a court order restraining its enforcement, or

"(iii) the burning of coal by such a source will result in an increase in emissions of any air pollutant for which national ambient air quality standards have not been promulgated (or an air pollutant which is transformed in the atmosphere into an air pollutant for which such a standard has not been promulgated), and that such increase may cause (or materially contribute to) a significant risk to public health,

he shall notify the Federal Energy Administrator of his finding and certify the period for which such order under such section 2(a) shall not be in effect with respect to such source. Subject to the conditions of the preceding sentence, such certification may be modified from time to time. For purposes of this subsection, subsection (c), and section 2(a) or (b) of the Energy Supply and Environmental Coordination Act of 1974, a source shall be considered unable to comply with an air pollution requirement (including a primary standard condition or regional limitation) only if necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time.

"(4) Nothing in this Act shall prohibit a State, political subdivision of a State, or agency or instrumentality of either, from enforcing any primary standard condition or regional limitation.

"(5) A conversion to coal (A) to which a suspension under subsection (b) or a compliance date extension under subsection (c) applies or (B) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 shall not be deemed to be a modification for purposes of section 111(a)(2) and (4) of this Act.

"(e) The Administator may, by rule, establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out subsection (c) shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to sources in air quality control regions in which national primary ambient air quality standards have not been achieved. No rule under this subsection may impair the obligation of any contract entered into before the date of enactment of this section. To the extent necessary to carry out this section, the Administrator may prohibt any State or political subdivision of a State, or an agency or instrumentality of either, from requiring any person to use a continuous emission reduction system for which priorities have been

established under this subsection, except in accordance with such priorities.

"*(f) No State, political subdivision of a State, or agency or instrumentality of either, may require any person to whom a suspension has been issued under subsection (b) (1) to use any fuel the unavailability of which is the basis of such person's suspension (except that this subsection shall not apply to requirements identical to Federal requirements under subsection (b) (3) or subsection (d) (2)).*

"*(g) (1) It shall be unlawful for any person to whom a suspension has been issued under subsection (b) (1) to violate any requirement on which the suspension is conditioned pursuant to subsection (b) (3) or any primary standard condition applicable to him.*

"*(2) It shall be unlawful for any person to fail to comply with any requirement under subsection (c), or any regulation, plan, or schedule thereunder (including a primary standard condition or regional limitation), which is applicable to such person.*

"*(3) It shall be unlawful for any person to violate any rule under subsection (e).*

"*(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i) (3).*

"*(h) Nothing in this section shall affect the power of the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.*

"*(i) (1) In order to reduce the likelihood of early phaseout of existing electric generating powerplants, any electric generating powerplant (A) which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on January 1, 1974) of the owner or operator of such plant, (B) for which a certification to that effect has been filed by the owner or operator of the plant with the Environmental Protection Agency and the Federal Power Commission, and (C) for which such Commission has determined that the certification has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single one-year postponement as provided in paragraph (2).*

"*(2) Prior to the date on which any powerplant eligible under paragraph (1) is required to comply with any requirement of an applicable implementation plan, such plant may apply (with the concurrence of the Governor of the State in which such plant is located) to the Administrator to postpone the applicability of such requirement to such plant for not more than one year. If the Administrator determines, after considering the risk to public health and welfare which may be associated with a postponement, that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increases to pay for the costs of such compliance, and other appropriate factors, then the Administrator shall grant a postponement of any such requirement.*

"(3) The Administrator shall, as a condition of any postponement under paragraph (2), prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph (2).

"(j)(1) The Administrator may, after public notice and opportunity for presentation of data, views, and arguments in accordance with section 553 of title 5, United States Code, and after consultation with the Federal Energy Administrator, designate persons with respect to whom fuel exchange requirements should be imposed under paragraph (2) of this subsection. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any suspension under subsection (b) of this section or conversion to coal to which subsection (c) applies or of any allocation under section 2 (d) of the Energy Supply and Environmental Coordination Act of 1974 or under the Emergency Petroleum Allocation Act of 1973.

"(2) The Federal Energy Administrator shall exercise his authority under section 2(d) of the Energy Supply and Environmental Coordination Act of 1974 and under the Emergency Petroleum Allocation Act of 1973 with respect to persons designated by the Administrator of the Environmental Protection Agency under paragraph (1) in order to require the exchange of any fuel subject to allocation under such Acts effective no later than forty-five days after the date of such designation, unless the Federal Energy Administrator determines, after consultation with the Administrator of the Environmental Protection Agency, that the costs or consumption of fuel, resulting from requiring such exchange, will be excessive.

"(k)(1) The Administrator shall study, and report to Congress not later than six months after the date of enactment of this section, with respect to—

"(A) the present and projected impact of fuel shortages and fuel allocation programs on the program under this Act;

"(B) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction systems would have on the total environment and on supplies of fuel and electricity;

"(C) the number of sources and locations which must use such technology based on projected fuel availability data;

"(D) a priority schedule for installation of continuous emission reduction technology, based on public health or air quality;

"(E) evaluation of availability of technology to burn municipal solid waste in electric powerplants or other major fuel burning installations, including time schedules, priorities, analysis of pollutants which may be emitted (including those for which national ambient air quality standards have not been promulgated), and a comparison of health benefits and detriments from burning solid waste and of economic costs;

"(F) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time for attainment prescribed in this

Act, including associated considerations of cost, time for attainment, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

"*(G) proposed priorities, for continuous emission reduction systems which do not produce solid waste, for sources which are least able to handle solid waste byproducts of such systems;*

"*(H) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentrations of sulfur dioxide in the ambient air; and*

"*(I) steps taken pursuant to authority of section 110(a)(3)(B) of this Act.*

"*(2) Beginning January 1, 1975, the Administrator shall publish in the Federal Register, at no less than one-hundred-and-eighty-day intervals, the following:*

"*(A) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (c) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsection.*

"*(B) Up-to-date findings on the impact of this section upon—*

"*(i) applicable implementation plans, and*

"*(ii) ambient air quality.*"

SEC. 4. IMPLEMENTATION PLAN REVISIONS.

(a) Section 110(a) of the Clean Air Act is amended in paragraph (3) by inserting "(A)" after "(3)" and by adding at the end thereof the following new subparagraph:

"*(B) As soon as practicable, the Administrator shall, consistent with the purposes of this Act and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.*"

(b) Subsection (c) of section 110 of the Clean Air Act is amended by inserting "(1)" after "(c)"; by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively, and by adding at the end thereof the following new paragraph:

"*(2)(A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than three months*

after date of enactment of this paragraph on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.

"(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

"(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

"(D) For purposes of this paragraph—

"(i) The term 'parking surcharge regulation' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

"(ii) The term 'management of parking supply' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

"(iii) The term 'preferential bus/carpool lane' shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

"(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promul-

gated after the date of enactment of this paragraph by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice."

SEC. 5. MOTOR VEHICLE EMISSIONS.

(a) Section 202(b)(1)(A) of the Clear Air Act is amended by striking out "1975" and inserting in lieu thereof "1977"; and by inserting after "(A)" the following: "The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5)(A) of this subsection for light-duty vehicles and engines manufactured during model year 1975."

(b) Section 202(b)(1)(B) of such Act is amended by striking out "1976" and inserting in lieu thereof "1978"; and by inserting after "(B)" the following: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile."

(c) Section 202(b)(5)(A) of such Act is amended to read as follows:

"(5)(A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within sixty days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977."

(d) Section 202(b)(5)(B) of the Clean Air Act is repealed and the following subparagraphs redesignated accordingly.

SEC. 6. CONFORMING AMENDMENTS.

(a)(1) Section 113(a)(3) of the Clean Air Act is amended by striking out "or" before "112(c)", by inserting a comma in lieu thereof, and by inserting after "hazardous emissions)" the following: ", or 119(g) (relating to energy-related authorities)".

(2) Section 113(b)(3) of such Act is amended by striking out "or 112(c)" and inserting in lieu thereof ", 112(c), or 119(g)".

(3) Section 113(c)(1)(C) of such Act is amended by striking out "or section 112(c)" and inserting in lieu thereof ", section 112(c), or section 119(g)".

(4) Section 114(a) of such Act is amended by inserting "119 or" before "303".

(b) Section 116 of the Clean Air Act is amended by inserting "119 (c), (e), and (f)," before "209".

(c)(1) The second sentence of subsection (b) of section 307 of such Act is amended by inserting ", or his action under section 119(c)(2)(A), (B), or (C) or under regulations thereunder," after "111(d)".

(2) The third sentence of such subsection is amended by striking out "or approval" and inserting in lieu thereof ", approval, or action".

SEC. 7. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT.

(a) Any allocation program provided for in section 2 of this Act or in the Emergency Petroleum Allocation Act of 1973, shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the United States designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

(b) In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal to which section 119 of the Clean Air Act applies, the Department of Health, Education, and Welfare shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c)(1) No action taken under the Clean Air Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856).

(2) No action under section 2 of this Act for a period of one year after initiation of such action shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. However, before any action under section 2 of this Act that has a significant impact on the environment is taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National

Environmental Policy Act by the appropriate Federal agency. Any action taken under section 2 of this Act which will be in effect for more than a one-year period or any action to extend an action taken under section 2 of this Act to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act, notwithstanding any other provision of this Act.

(d) In order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 (83 Stat. 856) for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

SEC. 8. ENERGY CONSERVATION STUDY.

(a) The Federal Energy Administrator shall conduct a study on potential methods of energy conservation and, not later than six months after the date of enactment of this Act, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

(1) the energy conservation potential of restricting exports of fuels or energy-intensive products or goods, including an analysis of balance-of-payments and foreign relations implications of any such restrictions;

(2) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource recovery in order to reduce energy demand, including the economic costs and fuel consumption tradeoff which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials; and

(3) means for incentives or disincentives to increase efficiency of industrial use of energy.

(b) Within ninety days of the date of enactment of this Act, the Secretary of Transportation, after consultation with the Federal Energy Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public mass transportation systems and encouraging increased ridership as alternatives to automobile travel.

(c) Such plan shall include, but shall not be limited to—

(1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the provision of expanded mass transportation service in urban areas;

(2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under

section 142(a)(2) of title 23, United States Code (the "Federal Aid Highway Act of 1973"), for the purpose of providing additional capacity for and encouraging increased use of public mass transportation systems;

(3) recommendations for a program of demonstration projects to determine the feasibility of fare-free and low-fare urban mass transportation systems, including reduced rates for elderly and handicapped persons during nonpeak hours of transportation;

(4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;

(5) recommendations on the feasibility of providing tax incentives for persons who use public mass transportation systems.

SEC. 9. REPORT.

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 3 through 7 of this Act.

SEC. 10. FUEL ECONOMY STUDY.

Title II of the Clean Air Act is amended by redesignating section 213 as section 214 and by adding the following new section:

"FUEL ECONOMY IMPROVEMENT FROM NEW MOTOR VEHICLES

"SEC. 213. (a)(1) The Administrator and the Secretary of Transportation shall conduct a joint study, and shall report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committees on Public Works and Commerce of the United States Senate within one hundred and twenty days following the date of enactment of this section, concerning the practicability of establishing a fuel economy improvement standard of 20 per centum for new motor vehicles manufactured during and after model year 1980. Such study and report shall include, but not be limited to, the technological problems of meeting any such standard, including the leadtime involved; the test procedures required to determine compliance; the economic costs associated with such standard, including any beneficial economic impact; the various means of enforcing such standard; the effect on consumption of natural resources, including energy consumed; and the impact of applicable safety and emission standards. In the course of performing such study, the Administrator and the Secretary of Transportation shall utilize the research previously performed in the Department of Transportation, and the Administrator and the Secretary shall consult with the Federal Energy Administrator, the Chairman of the Council on Environmental Quality, and the Secretary of the Treasury. The Office of Management and Budget may review such report before its submission to such committees of the Congress, but such Office may not revise the report or delay its submission beyond the date prescribed for its submission, and may submit to Congress' its comments respecting such report. In connection with such study, the Administrator may utilize the authority provided in section 307(a) of this Act to obtain necessary information.

"(2) *For the purpose of this section, the term 'fuel economy improvement standard' means a requirement of a percentage increase in the number of miles of transportation provided by a manufacturer's entire annual production of new motor vehicles per unit of fuel consumed, as determined for each manufacturer in accordance with test procedures established by the Administrator pursuant to this Act. Such term shall not include any requirement for any design standard or any other requirement specifying or otherwise limiting the manufacturer's discretion in deciding how to comply with the fuel economy improvement standard by any lawful means.*"

SEC. 11. REPORTING OF ENERGY INFORMATION.

(a) For the purpose of assuring that the Federal Energy Administrator, the Congress, the States, and the public have access to and are able to obtain reliable energy information, the Federal Energy Administrator shall request, acquire, and collect such energy information as he determines to be necessary to assist in the formulation of energy policy or to carry out the purposes of this Act or the Emergency Petroleum Allocation Act of 1973. The Federal Energy Administrator shall promptly promulgate rules pursuant to subsection (b)(1)(A) of this section requiring reports of such information to be submitted to the Federal Energy Administrator at least every ninety calendar days.

(b)(1) In order to obtain energy information for the purpose of carrying out the provisions of subsection (a), the Federal Energy Administrator is authorized—

(A) to require, by rule, any person who is engaged in the production, processing, refining, transportation by pipeline, or distribution (at other than the retail level) of energy resources to submit reports;

(B) to sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(C) to require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information; and such answers or other submissions shall be made within such reasonable period, and under oath or otherwise, as the Federal Energy Administrator may determine; and

(D) to administer oaths.

(2) For the purpose of verifying the accuracy of any energy information requested, acquired, or collected by the Federal Energy Administrator, the Federal Energy Administrator, or any officer or employer duly designated by him, upon presenting appropriate credentials and a written notice from the Federal Energy Administrator to the owner, operator, or agent in charge, may—

(A) enter, at reasonable times, any business premise or facility; and

(B) inspect, at reasonable times and in a reasonable manner, any such premise or facility, inventory and sample any stock of energy resources therein, and examine and copy books, records, papers, or other documents, relating to any such energy information.

(3) Any United States district court within the jurisdiction of which any inquiry is carried on may, upon petition by the Attorney General at the request of the Federal Energy Administrator, in the case of refusal to obey a subpena or order of the Federal Energy Administrator issued under this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c)(1) The Federal Energy Administrator shall exercise the authorities granted to him under subsection (b)(1)(A) to develop, within thirty days after the date of enactment of this Act, as full and accurate a measure as is reasonably practicable of—

(A) domestic reserves and production;

(B) imports; and

(C) inventories;

of crude oil, residual fuel oil, refined petroleum products, natural gas, and coal.

(2) For each calendar quarter beginning with the first complete calendar quarter following the date of enactment of this Act, the Federal Energy Administrator shall develop and publish a report containing the following energy information:

(A) Imports of crude oil, residual fuel oil, refined petroleum products (by product), natural gas, and coal, identifying (with respect to each such oil, product, gas, or coal) country of origin, arrival point, quantity received, and the geographic distribution within the United States.

(B) Domestic reserves and production of crude oil, natural gas, and coal.

(C) Refinery activities, showing for each refinery within the United States (i) the amounts of crude oil run by such refinery, (ii) amounts of crude oil allocated to such refinery pursuant to regulations and orders of the Federal Energy Administrator, his delegate pursuant to the Emergency Petroleum Allocation Act of 1973, or any other person authorized by law to issue regulations and orders with respect to the allocation of crude oil, (iii) percentage of refinery capacity utilized, and (iv) amounts of products refined from such crude oil.

(D) Report of inventories, on a national, regional, and State-by-State basis—

(i) of various refined petroleum products, relating refiners, refineries, suppliers to refiners, share of market, and allocation fractions;

(ii) of various refined petroleum products, previous quarter deliveries and anticipated three-month available supplies;

(iii) of anticipated monthly supply of refined petroleum products, amount of set-aside for assignment by the State, anticipated State requirements, excess or shortfall of supply, and allocation fraction of base year; and

(iv) of LPG by State and owner: quantities stored, and existing capacities, and previous priorities on types, inventories of suppliers, and changes in supplier inventories.

(d) Upon a showing satisfactory to the Federal Energy Administrator by any person that any energy information obtained under this

section from such person would, if made public, divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person, such information, or portion thereof, shall be confidential in accordance with the provisions of section 1905 of title 18, United States Code; except that such information, or part thereof, shall not be deemed confidential for purposes of disclosure, upon request, to (1) any delegate of the Federal Energy Administrator for the purpose of carrying out this Act and the Emergency Petroleum Allocation Act of 1973, (2) the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the General Accounting Office, when necessary to carry out those agencies' duties and responsibilities under this and other statutes, and (3) the Congress, or any committee of Congress upon request of the Chairman.

(c) As used in this section:

(1) The term "energy information" includes (A) all information in whatever form on (i) fuel reserves, exploration, extraction, and energy resources (including petrochemical feedstocks) wherever located; (ii) production, distribution, and consumption of energy and fuels wherever carried on; and (B) matters relating to energy and fuels, such as corporate structure and proprietary relationships, costs, prices, capital investment, and assets, and other matters directly related thereto, wherever they exist.

(2) The term "person" means any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business, who directly or through other persons subject to their control does business in any part of the United States.

(3) The term "United States" when used in the geographical sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(f) Information obtained by the Administration under authority of this Act shall be available to the public in accordance with the provisions of section 552 of title 5, United States Code.

(g)(1) The authority contained in this section is in addition to, independent of, not limited by, and not in limitation of, any other authority of the Federal Energy Administrator.

(2) The provisions of this section expire at midnight June 30, 1975, but such expiration shall not affect any administrative or judicial proceeding which relates to any act or failure to act if such act or failure to act was not in compliance with the requirements and authorities of this section and occurred prior to midnight, June 30, 1975.

SEC. 12. ENFORCEMENT.

(a) It shall be unlawful for any person to violate any provision of section 2 (relating to coal conversion and allocation) or section 11 (relating to energy information) or to violate any rule, regulation, or order issued pursuant to any such provision.

(b)(1) Whoever violates any provision of subsection (a) shall be subject to a civil penalty of not more than $2,500 for each violation.

(2) Whoever willfully violates any provision of subsection (a) shall be fined not more than $5,000 for each violation.

(3) It shall be unlawful for any person to offer for sale or distribute in commerce any coal in violation of an order or regulation issued pursuant to section 2(d). Any person who knowingly and willfully violates this paragraph after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to section 2(d) shall be fined not more than $50,000, or imprisoned not more than six months, or both.

(4) Whenever it appears to the Federal Energy Administrator or any person authorized by the Federal Energy Administrator to exercise authority under this section 2 or section 11 of this Act that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of subsection (a) the Federal Energy Administrator or such person may request the Attorney General to bring a civil action to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. In such action, the court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by subsection (a).

(5) Any person suffering legal wrong because of any act or practice arising out of any violation of subsection (a) may bring a civil action for appropriate relief, including an action for a declaratory judgment or writ of injunction. United States district courts shall have jurisdiction of actions under this paragraph without regard to the amount in controversy. Nothing in this paragraph shall authorize any person to recover damages.

SEC. 13. EXTENSION OF CLEAN AIR ACT AUTHORIZATION.

(a) Section 104(c) of the Clean Air Act is amended by striking "and $150,000,000 for the fiscal year ending June 30, 1974" and inserting in lieu thereof ", $150,000,000 for the fiscal year ending June 30, 1974, and $150,000,000 for the fiscal year ending June 30, 1975."

(b) Section 212(i) of such Act is amended by striking "three succeeding fiscal years." and inserting in lieu thereof "four succeeding fiscal years.".

(c) Section 316 of such Act is amended by striking "and $300,000,000 for the fiscal year ending June 30, 1974" and inserting in lieu thereof ", $300,000,000 for the fiscal year ending June 30, 1974, and $300,000,000 for the fiscal year ending June 30, 1975".

SEC. 14. DEFINITIONS.

(a) For purposes of this Act and the Clean Air Act, the term "Federal Energy Administrator" means the Administrator of the Federal Energy Administration established by Federal Energy Administration Act of 1974 (Public Law 93-275); except that until such Administrator takes office and after such Administration ceases to exist, such term means any officer of the United States designated as Federal Energy Administrator by the President for purposes of this Act and section 119 of the Clean Air Act.

(b) *For purposes of this Act, the term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (as defined in section 3(5) of the Emergency Petroleum Allocation Act of 1973).*

And the Senate agree to the same.

And the Senate agree to the same.

HARLEY O. STAGGERS,
TORBERT H. MACDONALD,
JOHN E. MOSS,
JOHN D. DINGELL,
PAUL G. ROGERS,
SAMUEL L. DEVINE,
ANCHER NELSEN,
JAMES T. BROYHILL,
JAMES F. HASTINGS,
Managers on the Part of the House.

JENNINGS RANDOLPH,
EDMUND S. MUSKIE,
JOSEPH M. MONTOYA,
HOWARD BAKER,
ROBERT T. STAFFORD,
HENRY M. JACKSON,
ALAN BIBLE,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 14368) to provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SECTION 1. SHORT TITLE; PURPOSE

House bill

Section 1(b) of the House bill set forth the purpose of the bill: to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and enhance the environment, and to provide requirements for reports respecting energy resources.

Senate amendment

Section 1(b) of the Senate amendment was identical to the House bill, except for the deletion of the reference to reporting requirements which reflected the Senate deletion of the provisions of the House bill relating to reporting of energy information.

Conference substitute

The conference substitute adopts the House provision.

SECTION 2. COAL CONVERSION AND ALLOCATION

House bill

Section 10 of the House bill required the Administrator of the Federal Energy Administration ("FEA"), to the extent practicable and consistent with the objectives of the bill, by order, after balancing on a plant-by-plant basis the environmental effects of use of coal

against the need to fulfill the purposes of the bill to prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of the bill, had the capability and necessary plant equipment to burn coal. Any installation to which such an order would apply was permitted to continue to use coal and coal derivatives as provided in section 119(b) of the Clean Air Act. To the extent coal supplies are limited to less than the aggregate amount of coal supplies which may be necessary to satisfy the requirements of those installations which can be expected to use coal (including installations to which orders may apply under this subsection), the Administrator of FEA was directed to prohibit the use of natural gas and petroleum products for those installations where the use of coal would have the least adverse environmental impact. A prohibition on use of natural gas and petroleum products under this provision of the House bill would have been contingent on the availability of coal, coal transportation facilities, and the maintenance of reliability of service in a given service area.

The Administrator of FEA was directed under the House bill to require that fossil-fuel-fired electric powerplants in the early planning process (other than combustion gas turbine and combined cycle units) be designed and constructed so as to be capable of using coal as a primary energy source instead of or in addition to other fossil fuels. No fossil-fuel-fired electric powerplant would be required to be so designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) if an adequate and reliable supply of coal is not available and is not expected to be available. In considering whether to impose a design or construction requirement, the Administrator was directed to consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

Under this section, the FEA Administrator was authorized by rule to prescribe a system for allocation of coal to users thereof in order to attain the objectives specified in this section.

Senate amendment

The Senate amendment differed from the House bill in these respects: (1) Prohibition orders on the use of petroleum products or natural gas were not authorized to be issued to plants located in air quality control regions in which national primary ambient air quality standards are now being exceeded or where the use of coal would cause concentrations of air pollutants to exceed national primary standard levels; (2) the duty to perform an environmental balancing analysis and the responsibility to establish conversion priorities on an environmental basis in a case of a short supply of coal, which responsibilities were vested by the House bill in the FEA Administrator, were deleted; (3) the FEA Administrator was authorized but not required to compel powerplants in the design stage to be designed and built so as to be capable of burning coal; and (4) authority "to enforce" orders prohibiting burning of petroleum products or natural gas was not termi-

nated on June 30, 1975. The effect of this last change was to provide that the mandatory orders prohibiting use of natural gas and petroleum products issued prior to June 30, 1975, could be made effective and enforced without time restriction thereafter.

Under the Senate amendment conversion to coal could only be ordered in accordance with section 119(b) of the Clean Air Act and therefore could not cause an "unavailability" of conforming fuel under section 119(a) of that Act. Thus, short-term suspension under section 119(a) would not be available to converters or other plants subject to a prohibition order.

Conference substitute

Section 2(a) of the conference substitute contains the provisions of the House bill and Senate amendment which required the FEA Administrator to prohibit any existing electric powerplant with the capability and necessary plant equipment to burn coal from burning natural gas or petroleum products as its primary energy source. The effect of this provision is to require FEA to issue such prohibition orders not only to powerplants which are burning petroleum products or natural gas, but also to those which are burning coal. In the former case, the effect of the prohibition order will be to require conversion to the burning of coal as the source's primary energy source. In the latter case, the effect will be to prevent such plant from switching to the burning of petroleum products or natural gas.

The requirement under section 2(a) that FEA prohibit use of natural gas and petroleum products is subject to several qualifications and limitations. First, it applies only to powerplants (as defined in section 2(e)(1)); with respect to other major fuel-burning installations FEA is authorized, but not required, to issue such prohibition orders.

Second, only powerplants and major fuel-burning installations which have the capability and necessary plant equipment to burn coal on the date of enactment can be subject to an FEA prohibition order. "Capability" and "necessary plant equipment", as used in this section, include necessary coal handling facilities and appurtenances both inside and outside the plant; necessary land for storage of coal; equipment such as unloaders, conveyors, pulverizers, scales, burners, soot blowers, and special coal-burning instrumentation and controls. These latter are necessary not only to maintain dependable operation, but to assure operational safety, since coal firing is often a much less stable operation than that obtainable with natural gas or petroleum products.

It is not intended, however, to imply that the absence of any one or combination of these facilities or equipment would be grounds for concluding that the facility lacked capability or necessary plant equipment to burn coal. Nor is it intended that this condition be applied in an overly rigid or strict fashion which would frustrate the intent of the section to encourage burning of coal in lieu of petroleum products or natural gas.

Third, prohibition orders shall be issued, shall become effective, and shall remain in effect only in accordance with the findings and requirements of subsection (b). With respect to any powerplant or major fuel-burning installation, the FEA Administrator is author-

ized to issue a prohibition order only if he finds that the burning of coal is practicable and consistent with the purposes of the bill and that sufficient supplies of coal and coal transportation facilities will be available to plants expected to burn coal during the period the order will be in effect. Assessment of the availability of coal would take into consideration the practicability of its production, transportation to the powerplant, and of any State laws or policies limiting its extraction or use.

With respect to a powerplant, the FEA Administrator must make the additional finding that the prohibition will not impair the reliability of service in the area served by the plant. These findings must be made before a prohibition order may lawfully be issued by FEA.

In addition to findings required of FEA, certain action by the Administrator of the Environmental Protection Agency (EPA) is required before any prohibition order which has been issued by FEA may be made effective.

A prohibition order which FEA intends to apply for a period ending on or before June 30, 1975, could not become effective until the date which EPA certifies pursuant to section 119(d)(1)(A) of such Act is the earliest date that such plant or installation will be able to comply with the air pollution requirements which will be applicable to it.

In the case of a prohibition order which FEA intends to be in effect after June 30, 1975, the order may not take effect until (i) EPA notifies the FEA under section 119(d)(1)(B) of the Clean Air Act that such plant or installation will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under section 119(c) of such Act, or (ii) if such notification is not given, the date which the EPA certifies pursuant to section 119(d)(1)(B) of such Act is the earliest date that such plant or installation will be able to comply with all applicable requirements of such section 119. In addition, an order will not be effective for any period certified by EPA under section 119(d)(3)(B) of such Act.

In making the determinations referred to above, the EPA Administrator is to consider only the physical and technological feasibility of the plant or installation complying with the Clean Air Act requirements while subject to a prohibition order. He is not to consider economic feasibility of compliance. The reasonableness of the costs of compliance (and the economic feasibility of compliance) are matters solely to be considered by the Administrator of FEA in determining the practicability of a prohibition order issued under this section.

If the FEA Administrator determines that unreasonably high costs of compliance would be imposed upon a plant or installation which would be required to convert to coal and comply with the requirements of section 119 of the Clean Air Act (or existing requirements under that Act), he may conclude that he cannot make the finding of practicability under section 2(a)(1)(A) of this Act. If he were to reach such a conclusion, he would not be authorized to issue a prohibition order.

If such an order had already been issued and the FEA Administrator subsequently determined that compliance with its terms and

with Clean Air Act requirements would not be practicable, he would be required to rescind the order, or to modify the order so that compliance would be practicable. In no event, however, is the Administrator of FEA authorized to override or modify Clean Air Act requirements (which are and will be in effect under the existing Clean Air Act or prescribed under section 119) in order to make practicable the implementation of a prohibited order.

Of course, whether or not it is physically possible for a plant or installation to burn coal and meet requirements of the Clean Air Act depends on the type of coal to be burned and the availability of emission control equipment, in addition to other factors. Thus, when EPA exercises its judgment under section 119(d) of the Clean Air Act, its findings will be in conditional terms as provided in that section.

These conditional findings are important for two reasons. These conditions are to form the basis for the Administrator's action under section 119 of the Clean Air Act (in making findings, granting suspensions, prescribing primary standard conditions and interim requirements, etc.). Moreover, until such conditions are capable of being met by the plant or source, no prohibition order under section 2(a) of this Act may become effective.

This does not mean that the prohibition order's effectiveness is contingent upon actual compliance by the plant or installation with Clean Air Act requirements. If this were the policy, a plant or installation could resist such a prohibition order merely by refusing to comply with Clean Air Act requirements. The conferees do not intend to permit such a result. A prohibition order will not be in effect if the source is unable to comply with Clean Air Act requirements; however, if the source is able to comply but fails to do so, the prohibition order could stay in effect and the source would be subject to enforcement action under the Clean Air Act.

Under section 119(d), if a source to which a suspension or compliance date extension applies fails to comply with any primary standard condition or with any regional limitation applicable to it, the EPA Administrator must either enforce compliance with such condition or limitation under section 113 or, after appropriate procedure, revoke the suspension or compliance date extension. In the latter case, the source would have to comply with all air pollution requirements which would have otherwise been applicable without the suspension or compliance date extension.

Further discussion of primary standard condition and the regional limitation are to be found in the discussion of section 3 of the conference substitute (the new section 119 of the Clean Air Act). However, it is important to note that the provision of section 119(d) of the Clean Air Act relating to pollutants for which national ambient air quality standards have not been prescribed (which provision is also discussed there) is intended to have a different effect than these other two requirements. While the Administrator of EPA must make a finding that a plant or installation will be able to meet the primary standard condition and the regional limitation (or the requirements under the existing Act) before a prohibition order may become effective, such a prior finding with respect to the plant or installation's

ability to meet the provision respecting such pollutants is not necessary. All that is required is that a prohibition order cease to be effective during any period during which the EPA Administrator notifies the FEA Administrator that burning coal by the plant or installation will not be consistent with such provision.

Still a fourth qualification on the mandate of section 2(a) is to be found in the procedural and consultative measures which are provided for in connection with the issuance of these prohibition orders. Furthermore, prohibition orders must be issued no later than June 30, 1975, although they may be modified or made effective thereafter.

In light of this limitation on FEA's order issuing authority, the conference substitute requires only informal and expedited procedures prior to the issuance of such orders. No formal adjudication or rulemaking is intended, nor is 5 U.S.C. 554, 556, or 557 to apply in the issuance of such orders or in any other proceeding under this Act or under section 119 of the Clean Air Act. To the extent that constitutional requirements may necessitate some opportunity for cross-examination with respect to some issues of fact, it is anticipated by the conferees that this opportunity would be provided by the courts in judicial review or enforcement proceedings or by means of a remand to the appropriate Administrator.

As used in the conference substitute, the term "interested persons" includes the public. Consequently, whenever the conference substitute (including the provisions which amend the Clean Air Act) requires notice and opportunity for presentation of views, the public must be afforded notice and must be given the same opportunity to present views as other interested persons.

While the conference substitute does not require FEA consultation with the Federal Power Commission, the conferees intend that, to the maximum extent practicable prior to the exercise of any authority under this section, the FEA Administrator should consult with all affected departments and agencies of government (including the FPC) in order to obtain recommendations of such agencies covering matters within their administrative jurisdiction and expertise. For example, the physical conversion of electric generating facilities from petroleum products or natural gas firing to coal firing may have implications respecting adequacy and reliability of bulk power supply, matters within the FPC's jurisdiction under the Federal Power Act.

In order to assure that the conferees' intent to encourage the combustion of coal where practicable and consistent with the broad purpose of the Act would not be unduly delayed or frustrated by endless litigation, the conferees adopted the Senate amendment which deleted the third sentence of section 10(a) of the House-passed bill (requiring that conversions be required with respect to plants or installations where the conversion would have the least environmental impact, in the case of a short supply of coal). This decision does not mean that FEA should ignore such considerations. The conferees chose not to impose such a requirement, but rather intend to direct FEA to take account of such factors insofar as practicable after consultation with EPA.

A fifth limitation on section 2(a) is that all prohibition orders and all modifications thereof must expire no later than January 1, 1979.

Section 2(c) of the conference substitute also authorizes the Administrator of FEA to require that fossil-fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable of using coal as a primary energy source. (The conferees recognize that any new powerplant would have to comply with applicable new source performance standards under the Clean Air Act.) The conferees thus adopted the discretionary provision of the Senate amendment in this respect. Moreover, no fossil-fuel-fired electric powerplant may be required to be so designed and constructed, if (1) to do so is likely to result in impairment of reliability or adequacy of service, or (2) an adequate and reliable supply of coal is not expected to be available. In considering whether to impose a design or construction requirement, the Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of requirements imposed under this provision.

Subsection (d) authorizes the FEA Administrator to allocate coal (1) to any powerplant or major fuel-burning installation to which a prohibition order has been issued under subsection (a), or (2) to any person as may be necessary to effectuate the purposes of this Act.

The FEA Administrator's authority to issue (but not to amend or enforce) rules or orders to allocate coal expires June 30, 1975.

It is the conferees' intention to require the FEA Administrator, if he finds it necessary to allocate coal after June 30, 1975, to ensure that the purposes of the bill are carried out, to do so pursuant to general rules which he has promulgated before such date. These rules should establish procedures and criteria for allocating coal after such date as may be necessary for assuring that coal producers or suppliers (or other persons handling coal) will expeditiously comply with any allocation made pursuant to such rules or orders. In addition, any rules or orders issued before July 1, 1975, could be amended as necessary to carry out the purposes of the bill. Thus, a direction after June 30, 1975, to a person to supply coal to a user pursuant to rules issued before that date would not be barred by the June 30, 1975, expiration date for issuing rules or orders. Rules and orders under section 2(d) should also specify procedures for FEA to respond to EPA's designation of persons to whom fuel exchange orders should be issued under section 119(j) of the Clean Air Act and to effectuate the requirement of section 7(a) of this Act.

SECTION 3. SUSPENSION AUTHORITY

House bill (Short Term)

Section 2 of the House bill provided for short term suspension of stationary source fuel or emission limitations but, with one exception, did not authorize long-term delay of such limitations. The bill added a new section 119 to the Clean Air Act which permitted the Administrator of the Environmental Protection Agency to suspend until June 30, 1975, or one year after date of enactment (whichever comes

first), any stationary source fuel or emission limitation. A suspension could be granted by the Administrator either upon his own motion or upon the application of a source or a State, if the source could not comply with such limitations because of the unavailability of fuel. The Administrator of the Environmental Protection Agency was directed to give prior notice to the Governor of the State and the chief executive of the local government unit where the source is located. He was also directed to give notice to the public and to allow for the expression of views on the suspension prior to granting it unless he finds that good cause exists for not providing such opportunity. Judicial review of such suspension was restricted to certain specified grounds.

The Administrator was required to condition the granting of any suspension upon adoption of any interim requirements that he determined to be reasonable and practicable. These interim requirements were to include necessary reporting requirements, and a provision that the suspension would be inapplicable during any period when clean fuels were available to such source. The Administrator was required to determine when such fuels were in fact available. It was the intent of the House that the Administrator in making such determination take into consideration the costs associated with any changes that would be required to be made by the source to enable it to utilize such fuel. No source which converted to coal and to which section 119(b) applies, however, could be required under this provision to return to the use of oil or natural gas.

The suspension was also to be conditioned on adoption of such measures as the Administrator determined were necessary to avoid an imminent and substantial endangerment to the health of persons. This authorized not only requirements that a facility shut down during air pollution emergencies, but also (for example) a requirement that it keep a reserve supply of clean fuels on hand to be burned to avoid such emergencies.

The purpose of the short term suspension provision was to enable sources to continue operation during any fuel shortage which may exist prior to June 30, 1975, while at the same time limiting as much as possible the impact on air quality.

Senate amendment (Short Term)

The provisions of the Senate amendment were substantially similar to those contained in the House bill, except that, in the intention of the Senate, no plant which was prohibited from burning petroleum products or natural gas under the bill could be considered to be eligible for a short term suspension, solely because of the unavailability of fuels. Such sources were eligible only for suspension of air pollution requirements under the long term provisions of section 119(b) and then only if they had converted to the burning of coal.

House bill (Long Term)

The bill provided that no air pollution requirement could have the effect of prohibiting any such source from burning coal, except as provided in the conditions specified in section 119 of the Clean Air Act. The bill prohibited the application of such requirements to sources which are either ordered to convert to coal or which began to convert

to coal during the period September 15, 1973, and ending on date of enactment of this bill. This prohibition against application of such requirements to such source could in some instances continue until as late as January 1, 1979. The prohibition would only apply if the source were placed, after notice and opportunity for oral presentation of views, on a schedule approved by the Administrator of the Environmental Protection Agency. The schedule would have to provide a timetable for compliance with the fuel or emission limitations of the applicable implementation plan no later than January 1, 1979.

All compliance schedules under section 119(b) also had to provide for compliance with interim requirements that will assure that the source will not materially contribute to a significant risk to public health.

Senate amendment (Long Term)

The Senate amendment contained provisions similar to those in the House bill with these important exceptions:

First, because of the mandatory nature of the Senate's coal conversion provision and the fact that the Senate prohibition on the burning of petroleum products or natural gas could be made effective and enforced at any time, before or after June 30, 1975, the Senate's long term Clean Air Act requirements were imposed on the source; they were not left to the option of the source, as in the House bill.

Second, the Senate amendment limited the provisions pertaining to "voluntary converters" (i.e., those plants which began conversion to coal prior to enactment of the bill) to those which began conversion during the 90-day period prior to December 15, 1973.

Third, the Senate amendment limited the application of section 119 (b) to sources (1) which were located outside of a region in which national primary ambient air quality standards are currently being exceeded and (2) which would not, as a result of a conversion to coal, cause or contribute to concentrations of air pollutants in excess of primary standards. The House bill contained no such limitation.

Conference substitute

Section 3 of the conference substitute adds a new section 119 to title I of the Clean Air Act.

Section 119(a).—Definitions. Section 119(a) defines terms used in the new section 119.

Section 119(b)(1).—Short-term suspensions. Subsection (b) of the new section 119 establishes the conditions under which short-term suspension of stationary source fuel or emission limitations may be granted by the Administrator of the Environmental Protection Agency.

Two types of persons are eligible for a suspension during the period ending June 30, 1975. The first is any person whom the Administrator finds will be unable to comply with such limitation during such period solely because of the unavailability of fuels that would permit that person to comply with such limitation. No person to whom a prohibition order has issued under section 2(a) of the Energy Supply and Environmental Coordination Act would be eligible for a suspension of this first type unless he cannot obtain coal which permits compliance with air pollution requirements. Persons who would be eligible for

this type of suspension include, but are not limited to, those to whom conforming fuels are unavailable because of strikes, embargoes, accidents, allocation rules, or orders under the Emergency Petroleum Allocation Act or under section 2(d) of this Act, or exchange orders under section 119(j) of the Clean Air Act. (Unavailability does not include unavailability of natural gas and petroleum products by reason of an order under section 2(a) of the bill).

The second type of person who may receive short-term suspensions under the Clean Air Act is an owner or operator of a fuel-burning stationary source to which subsection 119(c)(1)(A) or (B) applies and which has converted to the burning of coal. This group has two subgroups (1) those installations which are prohibited from burning petroleum products or natural gas under section 2(a) of the Energy Supply and Environmental Coordination Act and have, after September 15, 1973, converted to the burning of coal, and (2) those installations which began conversion to the use of coal during the period September 15, 1973-March 15, 1974, whether or not a prohibition under section 2(a) has been issued with respect to any such installation. No installation which had been burning coal and which did not convert from the burning of petroleum products or natural gas (either in response to a prohibition order or voluntarily beginning during the period September 15, 1973-March 15, 1974) would be eligible for a suspension under section 119(b)(1)(A)(ii).

In the case of a plant or installation which is described in section 119(c)(1)(A) or (B) and which has converted to burning coal, no short-term suspension may be granted by the Administrator of EPA unless he finds that the source will be able to comply with all primary standard conditions which will be applicable to the source.

In addition to the measures he imposes as primary standard conditions, the Administrator is required to condition the granting of any suspension upon adoption of any other interim requirements that he determines are reasonable and practicable. These interim requirements must include necessary reporting requirements and a provision, applicable only to those sources which receive a suspension under section 119(b)(1)(A)(i), that the suspension be inapplicable during any period when clean fuels are available to such source. The Administrator would be required to determine when such fuels are in fact available. It is the intent of the conferees that the EPA Administrator in making a determination to make a short term suspension inapplicable would take into consideration the costs associated with any changes that would be required to be made by the source to enable it to utilize such fuel.

The suspension would also be conditioned on adoption of such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to the health of persons. This would authorize not only requirements that a facility shut down during air pollution emergencies, but also (for example) a requirement that it keep a reserve supply of clean fuels on hand to be burned to avoid such emergencies.

Section 119(b)(2).—A suspension may be granted by the Administrator either upon his own motion or upon the application of any person or a State. The Administrator is directed to give notice and

opportunity for public hearing prior to granting a suspension or denying an application therefor, unless he finds that good cause exists for not providing such opportunity. Before granting a suspension he is also directed to give actual notice to the Governor of the State in which the source or person is located and to appropriate local officials (as determined by the Administrator). Judicial review of such suspension and any related interim requirements and primary standard conditions would be restricted to certain specified grounds.

Section 119(c)(1).—Compliance date extension. In recognition of the need to balance energy needs with environmental requirements and the unique problems facing any source which converts to coal in response to the fuel shortage, the conferees adopted a provision that no air pollution requirement (as defined in section 119(a)(2)) could have the effect of prohibiting the burning of coal by any source which is described in section 119(c)(1)(A) or (B), which converts to the burning of coal, and for which the requisite findings have been made under section 119(c)(2)(A), except as provided in section 119(d)(3).

This prohibition against application of such "air pollution requirements" to such source could in some instances continue until as late as January 1, 1979. It would expire on such earlier date as is established pursuant to section 119(c)(2)(B) and (C).

The compliance date extension provision is only applicable to plants or installations which began conversion from petroleum products or natural gas to coal voluntarily between September 15, 1973, and March 15, 1974, or converted from petroleum products or natural gas to coal as a result of an order under section 2.

As noted above, before the provisions of section 119(c)(1) may apply to any person, the Administrator of EPA must make certain findings. First, he must find that the source will be able to comply with all primary standard conditions (just as in the case of a short-term suspension under section 119(b)(1)(A)(ii)). Second, he must find that the source will be able to comply with the regional limitation (defined in section 119(a)(6)).

Section 119(d).—Primary standard conditions. Primary standard conditions are emission limitations, requirements respecting pollution characteristics of coal, or other enforceable measures for control of emissions which the Administrator determines must be complied with by a source in order to assure that the burning of coal by that source will not result in emissions of any air pollutant which cause or contribute to concentrations of such air pollutant in excess of any national primary ambient air quality standard for that pollutant. The Administrator of EPA may require that the source use intermittent or alternative controls during such period if he determines that such measures are enforceable and will provide the necessary assurance pertaining to attainment and maintenance of the national primary air quality standards.

The decision of which measures to impose is left to the discretion of the Administrator. In the conferees' view, however, specific enforceable requirements must be made applicable to specific sources in order to have an effective air pollution control strategy. Moreover, enforcement of any such requirement should not be made contingent upon a showing that the national primary standard is being exceeded at any

place or time. This is not required under the Clean Air Act, as amended in 1970; nor is it required here. The conferees subscribe to the view expressed in S. Rept. No. 91–1196 that: "[National ambient air quality] Standards are only the reference point for the analysis of the factors contributing to air pollution and the imposition of control strategy and tactics."

The regional limitation means, in effect, that no source which is located in an air quality control region (as designated in accordance with section 107 of the Clean Air Act) in which any national primary ambient air quality standard for a particular pollutant is being exceeded may emit that pollutant in amounts which exceed any emission limitation or may violate any other air pollution requirement for that pollutant under the applicable implementation plan. Thus, for instance, if the national primary standard for particulates is being exceeded at any point within an air quality control region, no source located within that region could be permitted by section 119(c) to emit particulates in excess of implementation plan limitations applicable to such source. Sulfur oxide emissions by a source covered by section 119(c) and located in a region exceeding primary standards for particulates could exceed applicable implementation plan limitations for sulfur oxides so long as the national primary standard for sulfur oxides was not being exceeded in the region and the source complies with all primary standard conditions. Moreover, if at any subsequent time it is determined that the national primary standard for particulates is being attained in the region, then such source would no longer be subject to the regional limitation (but of course would continue to be subject to all primary standard conditions).

The purposes of requiring these findings are several. First, since the national primary standards are intended to assure protection of the public health, the conferees felt that no override of air pollution requirements should be permitted if it would cause or contribute to the national primary standards being exceeded. Second, although the conferees did not want to totally preclude conversions to coal in air quality control regions in which national primary standards for any given pollutant may be exceeded, they did want to assure that no implementation plan requirement for such pollutant would be overridden for a source located in such a region.

Primary standard conditions (including requirements respecting pollution characteristics of coal), regional limitations and other requirements applicable to a source under section 119 would be enforceable under the citizens' suit provisions of the Clean Air Act.

While the source's ability to comply with the regional limitation and primary standard conditions are threshold determinations which must be made prior to the issuance of a compliance date extension under section 119(c)(1), this is not the case with respect to the provision relating to emissions of any air pollutant for which national ambient air quality standards have not been promulgated (or an air pollutant which is transformed in the atmosphere into an air pollutant for which such a standard has not been promulgated). If at any time the Administrator determines that the burning of coal by any source to which section 119(c)(1) applies (or which has received a prohibition order under section 2(a) of this Act but to which section 119(c)(1)

does not apply), will result in an increase, which causes (or materially contributes to) a significant risk to public health, in such emissions, he is directed to notify the Administrator of FEA.

Under section 2(b) of this Act, upon receipt of such notice by FEA, the prohibition order section 2(a) would cease to be effective until the EPA Administrator determines that such source no longer causes (or materially contributes) to a significant risk to public health.

In so providing, the conferees did not intend to authorize the Administrator of EPA to circumvent air quality standards and implementation plan procedures and criteria for the regulation of air pollution emissions under the Clean Air Act. However, the conferees are aware of the potential, described in several recent reports, that inadequately considered coal conversion orders may cause or contribute to a significant risk to public health from certain pollutants for which ambient standards have not been prescribed. The pollutants which have been mentioned include sulfuric acid aerosols, sulfate particles, nitrates, cadmium, particulate polycyclic organic matter, arsenic, etc. In the judgment of the conferees, the Administrator of EPA should be authorized to assure that orders prohibiting the burning of petroleum products or natural gas under section 2(a) of the Energy Supply and Environmental Coordination Act would not create major new air pollution threats to health, exacerbate existing serious threats to health as a result of the increased emission of such presently unregulated air pollutants, or prevent sources of such pollutants from reducing a significant risk to health.

Of course, action by the Administrator of EPA to notify FEA and thus to make ineffective a prohibition order on the basis of this determination should not be undertaken without a reasonable basis. To permit such a determination of causing or materially contributing to a significant risk to health to be made on speculative or conjectural bases would be inconsistent with the conferees' strong intention to encourage burning of coal to the maximum extent practicable without endangering public health.

If the Administrator of EPA determines that all primary standard conditions are not being met by any person to whom such conditions are applicable, the Administrator must take one of two actions: he must either commence an enforcement action under section 113 or he must revoke the suspension or compliance date extension. The Administrator is also required to exercise one of these two options if he finds that any person who has converted to coal and who is covered by section 119(c)(1)(A) or (B) is violating the regional limitation.

If, however, the Administrator finds that a person is unable to comply with all primary standard conditions (and with any revised conditions which he might establish), or with the regional limitation and such person is subject to a prohibition order under section 2(a) of the Energy Supply and Environmental Coordination Act, the EPA Administrator must so notify the FEA Administrator. This notice will cause such an order to cease to be effective with respect to such person, until such time as the EPA Administrator determines that compliance is possible (whether due to an FEA coal allocation order or for other reasons). Similarly, the EPA Administrator is required to give notice to the FEA Administrator, if he determines that any such condition

or limitation is unenforceable due to court order. In this instance also the prohibition order ceases to be effective, until EPA determines that such condition or limitation is enforceable.

The conferees reaffirm the following statement of intent from the House report:

There are three basic reasons for the committee's decision to encourage increased burning of coal until at least 1979. First, in order to encourage the opening of new coal mines to increase energy supplies, it is necessary to encourage an on-going substantial demand for such coal. Without reasonable likelihood that new coal mines will be able to market their new production, the opening of new mines and expansion of existing mine capacity may be regarded too risky. Second, to the extent that electric generating power plants can be encouraged to cease burning oil and natural gas, these fuels would be available to meet other energy needs, such as production of gasoline and home heating oil. Finally, since continuous emission reduction technology is available for major sources such as power plants, but is not available for sources such as homes, apartment houses, and small businesses, the purpose of the Clean Air Act can be better effectuated by having low pollution oil and natural gas burned to the maximum extent feasible, in sources for which no effective clean-up technology is available.

The committee believes that the priority effort of each source which is subject to section 119(c) should be to obtain low sulfur coal. If an adequate, long-term supply of low sulfur coal is available to such a source, the Administrator should only approve a plan which requires its use (and thus compliance with air pollution requirements) as expeditiously as practicable. In such a case, the Administrator would have to disapprove a plan which proposed to wait until January 1, 1979, before beginning to burn low sulfur coal. The committee believes that requiring priority consideration to the use of non-metallurgical low sulfur coal will reduce the likelihood of extended violation of applicable emission standards.

If a source is unable to obtain an adequate, long-term supply of low sulfur coal, it may seek to come into compliance by use of a continuous emission reduction system or by use of coal derivatives which would achieve the required degree of emission reduction. In such case, the source would still be required to act expeditiously to obtain an adequate supply of coal. However, compliance with all air pollution requirements would be required on a date established by the Administrator in the case of a source which will require a continuous emission reduction system for sulfur-related emissions, or as soon as practicable in the case of any other source; but in any case not later than January 1, 1979.

The Administrator would be required to impose, but would not be limited to imposing, the following requirements in any compliance schedule:

(1) the dates by which the source will solicit bids and enter into binding contractual agreements (or other equally binding commitment) for the procurement of an adequate coal supply to permit continued long term operation of the source;

(2) where the coal obtained by the source has sulfur content or other characteristics which will require installation of continu-

ous emission reduction equipment to enable the source to comply with emission limitations, the dates for soliciting bids for such equipment, contracting for such equipment, and installation and start-up of such equipment by a date that will permit a reasonable time for necessary adjustments of the equipment to maximize the reliability and efficiency of the system prior to January 1, 1979; and

(3) reasonable interim measures which the source should employ to minimize the adverse impact on air quality.

In establishing dates for contracting for coal, the Administrator should determine the earliest date that is reasonable and which will permit compliance by the time specified in this section. Because the dates of obtaining coal or continuous emission reduction systems may occur at approximately the same time for more than one source which may overburden supplies, the Administrator is specifically authorized to establish differing dates for obtaining coal or such systems to insure availability of supplies of such coal or equipment. In making such decisions, it is expected that the Administrator will provide the earliest date for those sources in areas with the most serious pollution problems.

It is the intent of the committee that when the coal available to the source necessitates the use of continuous emission reduction equipment for control of sulfur-related emissions, the source will have as much time as necessary to install the equipment and achieve timely compliance, in order to permit the orderly development of technology.

In recognition of the complex factors involved in determining schedules for the various sources, the committee intends that the Administrator have broad discretion in prescribing and approving schedules of compliance to insure that sources meet the requirements of this section without overburdening production capacity for continuous emission reduction systems for sulfur control or causing unacceptable disruption in energy production capacity.

The committee does not intend to permit delay of existing compliance schedules for control of particulate emissions. Some slight delay may be necessary in light of revised compliance schedules for control of sulfur-related emissions. However, only such minor adjustments as the Administrator determines to be unavoidable should be permitted in existing compliance schedules and emission limitations for control particulates.

While both the House bill and the Senate amendment required sources to which section 119(c) applied to obtain continuous emission reduction systems if long-term supplies of low sulfur coal were unavailable, the House bill would have permitted sources to opt to return to oil or gas after June 30, 1975, in which case this requirement would not have been applicable. By agreeing to the approach embodied in the Senate amendment which requires prohibition orders to be effective after June 30, 1975, and which precludes any source subject to an effective prohibition order from reverting to petroleum products or natural gas, the conference substitute makes the requirement respecting continuous emission reduction systems mandatory with respect to sources unable to obtain low sulfur coal.

The conferees were concerned with the conflicting reports regarding the effectiveness, reliability, cost, and environmental side effects of presently available continuous emission reduction systems for sulfur oxides. Substantial doubts were expressed about each of these points by several of the conferees. The conferees believed, however, that time remains for these systems to be improved prior to the time binding commitments would have to be made to procure such systems under section 119 of the Clean Air Act. Both House and Senate conferees expressed a commitment to carefully review these questions in upcoming hearings and to promptly modify these amendments, if warranted by the information obtained in the course of such review.

The conferees also take note that the term "long-term supply of coal" as used in both the House bill and the Senate amendment, is not defined or explained. It is the intention of the conferees that this term be interpreted in accordance with the broad objectives of this bill. Thus, for instance, sufficiently long-term contracts should be required to assure that new deep mines can and will be opened and that existing mines can and will be significantly expanded to substantially increase the energy supplies which will be available to the Nation. Furthermore, if the contracts are entered into for low sulfur coal, they should be of sufficient duration to assure a comparable degree of reliability of compliance with Clear Air Act requirements as would be provided by the installation of continuous emission reduction systems for control of sulfur oxide emissions.

The conferees also take note of the following statement in the House report:

In two States—Ohio and Kentucky—however, there is no applicable implementation plan in effect. This is so because of the Sixth Circuit Court of Appeals' opinion and order in *Buckeye Power, Inc.* v. *Environmental Protection Agency*. No. 72–1628 (6th Circ. 1973) and consolidated cases. The committee does not intend to preclude sources located in Ohio or Kentucky from eligibility for the exemption provided in section 119(b)(1). Therefore, the language of section 119 (b)(2)(B) would permit the Administrator to approve a plan for a source located in either of these states if the plan provides a compliance schedule to achieve "the most stringent degree of emission reduction that such source would have been required to achieve . . . under the first applicable implementation plan which takes effect after" the date of enactment.

The conferees intend to make section 119 applicable to plants and installations located in Ohio and Kentucky.

In the conference substitute, eligibility for the application of section 119(c)(1) is conditioned upon submission and approval of a compliance plan which must meet the requirements of regulations (which EPA must promulgate within 90 days after enactment) requiring any source to which a compliance date extension applies, to submit and obtain approval for its means of and schedule for compliance in accordance with the requirements of section 119(c)(2)(B). Failure to comply with such regulations is a prohibited act enforceable under section 113 of the Clean Air Act.

Moreover, the degree of emission reduction which must ultimately be achieved has been changed to that degree of emission reduction

required to be achieved by the applicable implementation plan in effect on the date of submittal of the means of and schedule for compliance (except if no plan is in effect on such date). The purpose of this change was to permit any plan revision under section 4 of this Act to be taken into account if such revision is approved by such date.

SECTION 4. IMPLEMENTATION PLAN REVISIONS

House bill

Section 3 of the House bill provided that the Administrator will only review those State implementation plans for regions in which the application of section 119(b) of the Clean Air Act to sources converting to coal may result in a failure to achieve a national primary ambient air quality standard on schedule. The bill directed the Administrator to order necessary plan revisions within one year after such conversion that would set forth any additional reasonable and practicable measures required to achieve ambient air quality standards. The plan revision would have to consider whether, despite the coal conversion, the national primary ambient standards could be achieved through the use of additional reasonable and practicable measures (which may include energy conservation measures) that were not included in the original plan. In allowing up to a year for the Administrator of the Environmental Protection Agency to act, it was the intent of the House to permit both the Administrator and the States sufficient lead time to obtain adequate information on the impact of coal conversions, both effected and anticipated, and to permit accurate assessment of the additional measures required for State implementation plans.

Senate amendment

The Administrator was required to review State air quality implementation plans to determine whether or not less restrictive emission limitations can be applied to fuel burning stationary sources in designated air quality control regions without causing or contributing to concentrations of air pollutants in excess of applicable primary air quality standards.

Each State retained the authority to determine whether or not, on the basis of the review by the Administrator, a revision of any aspects of applicable implementation plans is appropriate. Should the State decide to revise emission limitations, the Administrator would be required to act on the State's request within 90 days of submission.

TRANSPORTATION CONTROLS

House bill

Section 3 of the House bill amended section 110 of the Clean Air Act to include a provision that parking surcharges must receive explicit authorization by Congress by law before they may legally be imposed by the Environmental Protection Agency. The bill would, however, continue to permit preferential bus/carpool lanes to be implemented by the Environmental Protection Agency as set forth in current transportation control plans.

The bill also empowered the Administrator of the Environmental Protection Agency to suspend for one year the review of new parking facilities.

The House bill also provided that no standard, plan, or requirement relating to management of parking supplies or preferential bus/carpool lanes could be promulgated after enactment unless there has been a public hearing on such requirement, plan, or standard in the affected area.

Senate amendment

No comparable provision.

Conference substitute

Section 4 of the conference substitute retains the provisions of the House-passed bill pertaining to a prohibition on the imposition of parking surcharges by the Environmental Protection Agency, authority for EPA to suspend for one year the applicability of its parking management regulations (both under its transportation control and indirect source regulations), and the requirement for at least one public hearing prior to the imposition by EPA of any standard, plan, or requirement pertaining to parking management or exclusive carpool/bus lanes. The conferees note that on January 15, 1974, the Administrator of EPA published regulations in the Federal Register implementing the first two provisions which were identical to those contained in S. 2589 as reported by the conferees.

With respect to revision of State implementation plans, section 4 of the conference substitute basically follows the Senate amendment version of the provision with certain modifications intended to emphasize the relationship between this provision and the provisions relating to coal conversion. As soon as practicable after enactment, the EPA Administrator would be required to review applicable implementation plans and report to each State whether such plans could be revised with respect to stationary source fuel burning installations and their suppliers without impairing the State plan's effectiveness to attain and maintain the national ambient standards. States could at any time thereafter revise their plans. If effective to attain and maintain the national ambient standards, such revised plans would be required to be approved by the Administrator.

The conference substitute differs from the Senate amendment in that the Administrator's plan review authority is not restricted to air quality control regions in which the national primary ambient standards are being exceeded. This change, like the whole provision, is intended to permit a mechanism by which EPA's clean fuels policy can be implemented to the extent that States agree to do so and by which conversions to the burning of coal can be effectuated more readily consistent with requirements of the Clean Air Act.

SECTION 5. MOTOR VEHICLE EMISSIONS

House bill

The House bill amended section 202 of the Clean Air Act to continue the emission standards established by the Administrator for 1975 model year automobiles during the 1976 model year. The effect of this provision was to maintain in the 1976 model year a Federal 49-State standard of 1.5 grams per mile of hydrocarbons, 15.0 grams per mile of carbon monoxide and 3.1 grams per mile of oxides of nitrogen, and a Federal standard for California of 0.9 gram per mile of hydrocarbons,

9.0 grams per mile of carbon monoxide, and 2.0 grams per mile of oxides of nitrogen. These standards would apply to automobiles produced by all manufacturers, whether or not any individual manufacturer had applied for or received a suspension under section 202(b)(5) previous to the enactment of this section.

The House bill provided that after January 1, 1975, an automobile manufacturer may seek a single one-year suspension of the statutory standards for hydrocarbons and carbon monoxide applicable to the 1977 model year. The Administrator would be required to establish interim emission standards for 1977 model automobiles for hydrocarbons and carbon monoxide if he grants the suspension.

The House bill amended section 202(b)(1)(B) of the Clean Air Act to establish a maximum emission standard for oxides of nitrogen of 2.0 grams per mile applicable nationwide to 1977 model year automobiles. This defers the previous statutory standard of 0.4 gram per mile of oxides of nitrogen until the 1978 model year. No administrative suspension would be possible from either the 1977 or 1978 No_x standard. While the 1977 model year standard is a maximum of 2.0 grams per mile nationwide, California retains the right under section 209 of the Clean Air Act to seek a waiver for a more stringent standard.

Senate amendment

Identical to the House bill.

Conference substitute

The conferees retained the provisions of the House bill and Senate amendment.

SECTION 6. CONFORMING AMENDMENTS

House bill

Certain conforming amendments were adopted to assure the enforceability of certain provisions of new section 119 of the Clean Air Act, in addition to other purposes.

Senate amendment

Identical to the House bill.

Conference substitute

Certain additional conforming amendments were necessitated in light of the changes in the coal conversion and suspension authority provisions of the conference substitute. This section incorporates the needed conforming amendments.

SECTION 7. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT

House bill

This section contained provisions relating to allocation of low sulfur fuel to minimize adverse effects on health and welfare; a study of the health effects of increased sulfur oxides as a result of coal conversions; an exemption of coal conversion orders from the National Environmental Policy Act for one year; and an exemption of a Canada-New York State transmission line from the requirements of the National Environmental Policy Act.

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Senate amendment

The Senate amendment contained identical provisions relating to low sulfur fuel allocations, the study of health effects of sulfur oxides, and the one-year exemption of coal conversion orders from the National Environmental Policy Act. The Senate amendment also included a provision to clarify the relationship between the National Environmental Policy Act and the Clean Air Act. Under the Senate amendment, no action taken under the Clean Air Act would be deemed a "major Federal action significantly affecting the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act. Thus environmental impact statements under NEPA would not be required to be filed with respect to any action under the Clean Air Act.

Conference substitute

The conference substitute retains the provisions of the House bill, but in addition adds the provision of the Senate amendment which sets forth that no action taken under the Clean Air Act would be deemed a "major Federal action significantly affecting the human environment" within the meaning of section 102(2)(c) of the National Environmental Policy Act.

SECTION 8. ENERGY CONSERVATION STUDIES

House bill

This section contained provisions relating to various energy conservation studies.

Senate amendment

No comparable provision.

Conference substitute

With the exception of two provisions which the conferees deemed duplicative of studies authorized by existing law, the conference substitute retains the provisions of the House bill.

SECTION 9. REPORT

House bill

This section provided for a report by the EPA Administrator on the implementation of sections 2 through 7.

Senate amendment

Identical to the House amendment except for deletion of the reference to section 7.

Conference substitute

The conference substitute provides for a report comparable to that in the Senate amendment.

SECTION 10. FUEL ECONOMY STUDY

House bill

The House bill provided for EPA and the Department of Transportation to conduct a joint study on the feasibility of establishing a 20 percent fuel economy improvement standard for 1980 and later model new motor vehicles.

Senate amendment

No comparable provision.

Conference substitute

The conference substitute retains the provisions of the House bill. In this connection, the conferees' intention is that EPA and DOT should determine whether a 20 percent fuel economy improvement standard is feasible by 1980. If so, the agencies should also notify Congress whether a greater improvement can be realized within such time or whether such improvement can be realized at an earlier date. If not, the agencies should notify Congress of the lesser degree of improvement which can be realized within such time or how much later than 1980 it will be before such an improvement can be achieved.

Furthermore, the conferees wish to emphasize their concurrence with the following statement from the House report:

The purpose of the jointly conducted study is to eliminate duplication with current, ongoing fuel economy studies.

The committee expects, of course, that any current DOT studies will be coordinated with this study to eliminate any potential duplication and minimize waste of funds.

At the same time, the committee agrees that EPA must be actively involved in any fuel economy analysis to assure consistency between the findings of the study and the statutory requirements for automobile emission reductions.

The committee recognizes that DOT has an equally important safety responsibility but does not have either established test procedures, testing facilities or the expertise on engine technology to perform an independent review.

The committee expects this study to utilize EPA's established emission test procedures in order to avoid inconsistency in any subsequent legislation recommendation.

SECTION 11. REPORTING OF ENERGY INFORMATION

House bill

Section 11(a) of the House bill provided that for the purpose of assuring that the Federal Energy Administrator, the Congress, the States, and the public have access to and are able to obtain reliable energy information throughout the duration of this section, the Federal Energy Administrator, in addition to and not in limitation of any other authority, was to request, acquire, and collect such energy information as he determines to be necessary to assist in the formulation of energy policy or to carry out the purposes of this Act or the Emergency Petroleum Allocation Act of 1973. The Federal Energy Administrator was to promptly promulgate rules under the authority of subsection (b) of this section requiring reports of such information to be submitted to the Federal Energy Administrator at least every ninety calendar days.

Subsection (b) of section 11 of the House bill stated that in carrying out the provisions of subsection (a) the Administrator had the power to require, by rule, any person who was engaged in the production, processing, refining, transportation by pipeline, or distribution (other than at the retail level) of energy resources to submit reports;

sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents; require of any person, by general or special order, answers in writing to interrogatories, requests for report, or other information; and such answers or submissions were to be made within such reasonable period and under oath or otherwise as the Federal Energy Administrator could determine; and to administer oaths.

Subsection (c) of section 11 of the House bill provided that for the purpose of verifying the accuracy of any energy information requested, acquired, or collected by the Federal Energy Administrator, officers or employees duly designated by him upon presenting appropriate credentials and a written notice to the owner, operator, or at reasonable times and in a reasonable manner, could have entered and inspected any facility or business premises, to inventory and sample any stock of energy resources therein, and to examine and copy records, reports, and documents relating to energy information.

Subsection (d) of this section directed the Federal Energy Administrator to exercise the authorities granted to him under subsection (b) to develop within 30 days after the date of enactment of the House bill, as full and accurate a measure as is reasonably practicable of domestic reserves and production, imports, and inventories, of crude oil, residual fuel oil, or refined petroleum products, natural gas, and coal. This subsection further directed the Federal Energy Administrator, for each calendar quarter beginning with the first, complete calendar quarter following the date of enactment of the House bill, to develop and publish quarterly reports containing the following:

(1) Report of petroleum product, natural gas, and coal imports; relating to country of origin, arrival point, quantity received, geographic distribution within the United States.

(2) Report of domestic reserves and production of crude oil, natural gas, and coal.

(3) Report of crude oil and refinery activity; relating allocation of crude oil to refiners with products to be derived from such crude oil.

(4) Report of inventories, nationally, and by region and State for various refined petroleum products, relating refiners, refineries, suppliers to refiners, share of market, and allocation fractions; for various refined petroleum products, previous quarter deliveries and anticipated 3-month available supplies; for refinery yields of the various refined petroleum products, percent of activity, and type of refinery; with respect to the summary of anticipated monthly supply of refined petroleum products amount of set-aside for assignment by the State, anticipated State requirements, excess or shortfall of supply, and allocation fraction of base year; and with respect to LPG by State and owner: quantities stored, and existing capacities, and previous priorities on types, inventories of suppliers, and changes in supplier inventories.

Section 11(e) of House bill provided that where a person shows that all or part of the energy information required by section 11 was being reported by such person to another Federal agency (other than the Bureau of the Census, the Bureau of Labor Statistics, or the Inter-

nal Revenue Service), the Administrator could exempt such person from providing all or part of such energy information to him, and upon such exemption, such Federal agency, notwithstanding any other provision of law was to provide such energy information to the Administrator.

Section 11(f) of the House bill stated upon a showing satisfactory to the Administrator by any person that any energy information obtained under this section from such person or from a Federal agency would, if made public, have divulged methods or processes entitled to protection as trade secrets or other proprietary information of such person, such information, or portion thereof, was to be confidential in accordance with the provisions of section 1905 of title 18 of the United States Code, except that such information or part therof was not to be deemed confidential for purposes of disclosure, upon request, to (1) any delegate of the Federal Energy Administrator for the purpose of carrying out this bill and the Emergency Petroleum Allocation Act of 1973, (2) the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the General Accounting Office when necessary to carry out those agencies' duties and responsibilities under this bill and other statutes, and (3) the Congress or any committee of Congress upon request of the Chairman. This section 11(f) went on to say that the provisions of section 11 were to expire on midnight, June 30, 1975, but such expiration was not to affect any administrative or judicial proceeding pending on such date which related to any act or omission before such date.

Subsection (g) of section 11 contained the defined terms for use in the section.

The term "Federal agency" was to have the meaning of the term "executive agency" as defined in section 105 of title 5, United States Code.

The term "energy information" included all information in whatever form on fuel reserves, exploration, extraction, and energy resources (to include petrochemical feedstocks) wherever located; production, distribution, and consumption of energy and fuels wherever carried on; and included matters relating to energy and fuel, such as corporate structure and proprietary relationships, costs, prices, capital investment and assets, and other matters directly related thereto, wherever they existed.

The term "person" meant any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business, who directly or through other persons subject to their control did business in any part of the United States, its territories and possessions, the Commonwealth of Puerto Rico, or the District of Columbia.

Subsection (h) of the House bill's section 11 stated that information obtained by the Administrator under authority of this bill was to be available to the public in accordance with the provisions of section 552 of title 5, United States Code.

Subsection (i) of the House bill's section 11 provided that any United States district court within the jurisdiction of which any inquiry was carried on was authorized, upon petition by the Attorney General at the request of the Administrator, in the case of refusal to

obey a subpena or order of the Administrator issued under this section, to issue an order requiring compliance therewith; and any failure to obey the order of the court could have been punished by the court as a contempt thereof.

Senate amendment

No provision.

Conference substitute

The conference substitute takes the provisions of section 11 of the House bill with the deletion of subsection (e) thereof and with technical and clarifying changes.

The conferees wish to emphasize two important points with respect to the grant of authority to the Administrator to collect energy related information. First, it should be noted that the authority under this legislation is temporary in nature and will expire on June 30, 1975. This does not represent a decision by the conferees that our informational needs will not extend beyond this point in time. On the contrary, the conferees are convinced that these needs will be with us over the long term and that meeting these needs requires a comprehensive, long term legislative solution. The conferees are aware of the efforts now under way in the Committee on Interior and Insular Affairs of the Senate to develop a centralized energy information agency within the Federal Government. This legislation, S. 2782, the National Energy Information Act, is currently in markup, following extensive hearings and consultation with Federal agencies, industry and other experts in the area during the previous several months. A permanent and comprehensive Energy Information Act is needed to address the long-term energy information needs of the Executive, the Congress, and the public while reducing the burden of duplicative reporting on private industry by coordinating the collection of this information.

The effort represented by S. 2782 should go forward. But we cannot fail to respond to the immediate needs of the short-term situation awaiting the final resolution of the issues which attend the formation of a centralized energy data system.

Secondly, the conferees wish to emphasize that the energy information reporting authorities contained in this bill are intended to be in addition to, independent of, and not limited by any other authority of the Federal Energy Administrator. It is intended thereby to equip the Administrator of the Federal Energy Administration with broad powers, fully enforceable, to reach into any sector of the economy to bring together information relevant to his task and to assure that that information is freely available to the Congress. Moreover, to assure that the public is kept informed on a routine basis, the Administrator is required to publish quarterly reports containing specific and detailed information pertaining to supplies of petroleum products, natural gas, and coal. It is the conferees' intention that the making of periodic reports will assure the continued quality and timeliness of the data required to be obtained under this section.

SECTION 12. ENFORCEMENT

House bill

Section 10 of the House bill contained provisions relating to enforcement of orders relating to prohibition of burning of petroleum products or natural gas, coal allocation rules and orders, and energy information reporting requirements.

Senate amendment

Identical to the House bill, except with respect to enforcement of energy information reporting requirements.

Conference substitute

The conference substitute retains the substantive provisions of the House bill. These provisions appear in section 12 of the conference substitute.

SECTION 13. EXTENSION OF CLEAN AIR ACT AUTHORIZATIONS

House bill

No such provision was included.

Senate amendment

This section extends for one year (FY 1975) the authorizations in the Clean Air Act. The purpose of such amendment was to assure that sufficient funds were authorized to be appropriated for FY 1975 in order to permit the Administrator of EPA to meet its obligations and responsibilities under the bill.

Conference substitute

The conference substitute retains the provision of the Senate amendment.

The conferees wish to emphasize, however, that many important legislative issues pertaining to the Clean Air Act have yet to be resolved. Among these are the issues relating to the prevention of significant deterioration, the effectiveness and enforceability of intermittent control strategies, the reliability of existing sulfur emissions control technology, and many others.

The Senate Public Works Committee has already begun to hold hearings on the Clean Air Act. The House Interstate and Foreign Commerce Committee has stated its intent to schedule hearings on these problems and on legislative measures to address them. These hearings will be held before the Public Health and Environment Subcommittee of the House Interstate and Foreign Commerce Committee beginning in June, 1974. The existence of this provision does not in any way alter or postpone this commitment by the House committee to promptly consider the amendments now pending before the Subcommittee.

SECTION 14. DEFINITIONS

House bill

Section 12 of the House bill defines the term "Federal Energy Administrator" for purposes of the bill and the Clean Air Act. That term

refers to the Administrator of the Federal Energy Administration, which will be established by the Federal Energy Administration Act of 1974. Until that Administrator takes office, this section provides that the term will refer to an officer of the United States designated by the President.

Senate amendment

No comparable provision was included.

Conference substitute

The conference substitute retains the House bill provision with an additional amendment to explain the meaning of the term "petroleum products" as used in the provisions of both bills pertaining to orders prohibiting the burning of natural gas or petroleum products.

HARLEY O. STAGGERS,
TORBERT H. MACDONALD,
JOHN E. MOSS,
JOHN D. DINGELL,
PAUL G. ROGERS,
SAMUEL L. DEVINE,
ANCHER NELSEN,
JAMES T. BROYHILL,
JAMES F. HASTINGS,

Managers on the Part of the House.

JENNINGS RANDOLPH,
EDMUND S. MUSKIE,
JOSEPH M. MONTOYA
HOWARD BAKER,
ROBERT T. STAFFORD,
HENRY M. JACKSON,
ALAN BIBLE,

Managers on the Part of the Senate.

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HOUSE CONSIDERATION AND PASSAGE OF CONFERENCE REPORT ON H.R. 14368, JUNE 11, 1974

Mr. STAGGERS. Mr. Speaker, I call up the conference report on the bill (H.R. 14368) to provide for means of dealing with energy shortages by requiring reports with respect to the energy resources by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of June 6, 1974, pp. 97 and 119.)

Mr. STAGGERS. (during the reading). Mr. Speaker, I ask unanimous consent that the further reading of the statement be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

Mr. STAGGERS. Mr. Speaker, I rise in support of the conference report on H.R. 14368, the "Energy Supply and Environmental Coordination Act."

In many ways, the conference report represents a victory for the House-passed bill. The Senate sought to delete the House provision banning the Environmental Protection Agency from imposing parking surcharges. **[Sec. 110(c)(2)(B) CAA.]** In Conference, the House view prevailed. The House prevailed on the "parking management" provision, as well. **[Sec. 110(c)(2)(C) CAA.]**

The House provisions pertaining to the use of enforceable intermittent or alternative controls between now and 1979 were retained. **[Sec. 119(c)(1)(C) CAA.]** The House's energy conservation studies **[Sec. 8 ESECA]** and motor vehicle fuel economy studies **[Sec. 213 CAA]** were retained. The House provision on energy information reports was also included in the conference report. **[Sec. 11 ESECA.]**

Of course, in any conference some compromise is necessary. But this bill will help meet the Nation's energy and environmental needs.

Burning of coal will be encouraged in a manner consistent with protection of the public health. **[Sec. 7 ESECA.]** The automobile emission standards will be set at realistic levels. These levels will help conserve gasoline while keeping the progress toward cleaning our Nation's air.

While this bill is not a cure-all for America's energy problems, it will be of some help toward making the Nation more self-sufficient and more reliant on our most abundant fuel—coal.

Mr. GROSS. Mr. Speaker, I would ask the gentleman from West Virginia if I am correct in assuming this bill carries no authorization for appropriations as such?

Mr. STAGGERS. That is correct. When the bill left the House it was estimated at $55 million, but there was no authorization.

In the extension of the Clean Air Act we carried over the same amount as was used this year.

Mr. GROSS. The conference did not change the figure?

Mr. STAGGERS. No.

Mr. GROSS. The figure that was authorized previously?

Mr. STAGGERS. No; it is the same figure.

Mr. GROSS. And all amendments to this bill are germane?

Mr. STAGGERS. So far as I know, we studied that, and they are all germane.

Mr. DINGELL. Mr. Speaker, I agreed to the conference report of H.R. 14368 with great reluctance. I am not satisfied that the extensive amendments made by this bill to the Clean Air Act will prove to be in the public interest. I am even more disturbed by the encroachment of this bill on the National Environmental Policy Act of 1969. **[Sec. 7 (c) ESECA.]**

The House-passed bill did not, except in a minor way, amend NEPA. But the other body adopted a sweeping floor amendment with little debate which provides that hereafter environmental impact statements shall not be required in the case of any "action taken" by EPA under the Clean Air Act.

I think this broad amendment without adequate debate in Congress is a mistake, and I am concerned that many environmental organizations which supported NEPA, including the impact statement requirements of NEPA, did not speak out against it.

I also think that this amendment may cause considerable disruption of the clean air program by unsettling all EPA actions taken under the Clean Air Act prior to the adoption of this amendment. I have argued for some time that section 102(2)(C) of NEPA, which requires every agency to file an environmental impact statement before undertaking a major Federal action, also applies to EPA. But that agency has argued it is exempt from filing such impact statements when acting under the Clean Air Act. Now EPA is in a pickle. The amendment, by its terms, is not retroactive. It is clearly prospective. Thus, one can argue, including those who seek to scuttle the Clean Air Act, that NEPA did in fact apply to the Clean Air Act before the adoption of this amendment. Otherwise, why have the amendment? Such a contention, if accepted by the courts, could upset many EPA actions under the act.

Fortunately, the bill does not exempt EPA completely from NEPA. Except for the requirements of section 102(2)(C) of NEPA, all other provisions of the 1969 act still apply to EPA actions under the Clean Air Act, as they should.

I will support the bill—with reluctance—primarily because of **section 11**—the energy information section which I sponsored. **[Sec. 11 ESECA.]**

It provides broad powers to the Federal Energy Administration to collect energy data. Most importantly it directs that the FEA "promptly" promulgate regulations requiring energy data reports at

least every 90 days from a broad range of persons engaged in the production, including exploration and mining, processing, refining, transportation by pipeline, and distribution, except at the retail level, of all energy resources, including oil, natural gas, coal, uranium, geothermal steam, and so forth. It is intended by the conferees that the FEA promulgate these regulations within a short period of time, such as 45 days.

It provides that the data collected will not be given blanket confidentiality. Nor will such data be withheld under any other laws. Instead, to gain confidentiality, the person providing the energy information must make an affirmative showing to the FEA that disclosure would "divulge methods or processes entitled to protection as trade secrets or other proprietary information." Even if such a showing is made, the data will still be available, upon request, to several Federal agencies identified in the bill and to Congress and to any committee of Congress, upon request of the chairman of the committee.

I particularly call attention to the following conference committee statement (Congressional Record, June 6, 1974, p. H4906):

> The conferees wish to emphasize that the energy information reporting authorities contained in this bill are intended to be in addition to, independent of, and not limited by any other authority of the Federal Energy Administrator.

Thus, to the extent there is any conflict between the provisions of **section 11** of this bill and the provisions of sections 13 and 14 of the Federal Energy Administration Act of 1974, it is intended that the provisions of **section 11** of this bill shall prevail. I have particular reference to the public disclosure provisions of both acts, which may be in conflict. It is the intention of the conferees that **section 11(d)** of H.R. 14368 shall prevail in any instance of conflict.

As the conference report indicates, section 11(e) of the House bill was deleted. That section was added as a convenience to the persons required to provide energy data to the FEA so that they would not have to provide it to several agencies. At the urging of the Commerce Department it was deleted from the bill. Since it did not have any substantive effect on the section, and since its deletion would not relieve anyone of his duty to provide the data to FEA, I did not object to its deletion.

Mr. NELSEN. Mr. Speaker, I rise in support of the conference report on H.R. 14368, the Energy Supply and Environmental Coordination Act of 1974.

While I am unsatisfied with the coal conversion stationary source pollution provisions of this conference report, I am in general support of the report as a whole because of the many good features that it contains, particularly the extension of the auto emission standards which we have been trying to enact into law for the last 7 months.

The coal conversion provisions and the accompanying stationary source air pollution requirements **[Sec. 2 ESECA. Sec. 119 CAA]** are somewhat more restrictive than were the original House provisions. This is mainly because of a requirement imposed by the Senate conferees which precludes coal conversion by any source located in an urban area where primary air standards are not being met unless the source can immediately meet all requisite emission standards. This severely restricts coal conversion powerplants in these urban areas where adequate power supply is most needed.

It is my understanding that this bill was originally designed to allow much greater use of coal by electric utilities in an environmentally sound manner. The purpose was to check the increasing reliance by electric power and other industries on expensive imported oil. The mechanism for accomplishing this objective was to give authority to FEA to prevent burning of petroleum and natural gas after a determination by EPA that such an action was consistent with the protection of public health. Assurances were to be given which would not prevent the source from burning coal, by the application of any air pollution requirement, through January 1, 1979, except for an emergency situation set forth in section 303 of the Clean Air Act.

However, the conference report allows EPA to reverse, at any future time, its and FEA's decision to permit conversion by subverting and abbreviating the process by which environmental standards are established for new pollutants under the Clean Air Act. More specifically, the provision added by the conferees, which was neither in the House or Senate bills, allows the Administrator of EPA, upon finding that the burning of coal will result in an increase in emissions of any air pollutant for which National Ambient Air Quality Standards have not been promulgated and that may cause a significant risk to public health, to suspend the order prohibiting the use of oil or natural gas. **[Sec. 119(d)(3)(B) CAA.]** This is the first time that the adequacy of the emergency powers of the Clean Air Act have been questioned and I can recall no testimony or debate on this matter.

On the other hand, the standard-setting process established by the Clean Air Act for nonemergency situations is a very careful and deliberate process based upon the weighing of the latest scientific knowledge not only by representatives of the Federal Government but by members of professional societies and the general public. Any action, by the Federal Government, to monopolize this due process in the name of a potential emergency action is not in the public interest particularly in view of the fact that emergency actions are permitted under existing law.

I am concerned that many of us underestimate the magnitude of the coal deficit. In a recent study made by the Federal Power Commission, the estimated shortage in coal will range between 212 and 382 million tons or 46 to 83 percent of the total demand for coal by utilities in 1975. The provision added by the conferees is hardly an inducement to invest in long-term contracts for coal and, in my opinion, is counter to the mandate expressed by both Houses.

In addition, the total impact of the coal conversion and Clean Air Act provisions **[Sec. 2 ESECA, Sec. 119(c) CAA]** is to lock in the technology of scrubber systems because coal converters are required, within the next few years, to put on such scrubbers unless they can find a long-term supply of very low sulfur fuel. Several members of the conference, myself included, have serious questions about the feasibility of scrubber technology and we are concerned about the excessive cost of such systems and the solid waste that results from their use. As we stated in the conference report, we have "expressed a commitment to carefully review these questions in upcoming hearings and to promptly modify these amendments if warranted by the information obtained in the course of such review." I know that the Senate is in the

process of conducting comprehensive hearings on this and several other questions in the Clean Air Act, and I know that the gentleman from Florida (Mr. Rogers), chairman of our Subcommittee on Public Health and Environment, has promised me that similar hearings will be conducted before our subcommittee very shortly.

It is possible that alternatives to scrubber systems are feasible. These include the requiring of tall stacks to disperse pollutants or the use of intermittent control strategies such as varying levels of operation in accordance with meteorological conditions. Since alternatives exist, the use of scrubbers needs to be examined carefully before we commit the power industry to a questionable technology whose great cost will result in higher and higher utility rates for the consumer.

Even with all these problems in the area of coal conversion, the bill has too many good features for me not to recommend its enactment. It delays the 1975 automobile emission standards for hydrocarbons and carbon monoxide for 1 year, through 1976, and delays the 1977 NO_x standard for 1 year, through 1978. **[Sec. 202(b) CAA.]** These provisions are to my mind the most important in the whole bill. First, the auto industry has to know what requirements will be applicable to the 1976 models for which the air pollution certification process should have already begun. Second, the industry needs an additional year to perfect the devices that have been initiated on the 1975 models.

H.R. 14368 also prohibits the EPA from promulgating parking surcharge regulations and voids any such surcharges which are presently required by EPA. It also delays imposition by EPA of parking supply management regulations until January 1, 1975. As is well recognized by the members, these sorts of regulations have threatened to cause social and economic disruption in many areas of the country. The conference report would eliminate or delay the imposition of such regulations by the EPA, leaving this authority with the States, where it properly should be. **[Sec. 110(c)(2) (B) and (C) CAA.]**

Thus, because of the overriding importance of the auto emissions provisions, I urge adoption of the conference report.

Mr. Staggers. Mr. Speaker, I just want to compliment all of the conferees on their patience and hard work on the bill. It was a matter of give and take, and we had some difficult times while we were trying to get it done.

I also want to compliment the Senators on their part, and especially my own Senator from West Virginia. Senator Jennings Randolph, who is the chairman of the Senate committee on the other side, and Senator Muskie, from whom the legislation came. I wanted to compliment them, Mr. Speaker, because this was a tiresome and hard conference.

The chairman of the committee which represented the Senate in the handling of this energy bill is the senior Senator from my State of West Virginia, Hon. Jennings Randolph. His name is a noted one in the annals of his State and its parent State, the proud State of Virginia. He is a true scion of a noted family, thoroughly steeped in its noblest traditions of loyalty and concern for the public welfare. For 30 years he has represented our State in the House and in the Senate, and gained wisdom with every passing year. He has consistently employed that wisdom in furthering the good of the people he represents as well

as for the great Nation which he and his forbears have helped to build. There is nothing of the self-seeking in Senator Randolph. He can be counted on to be alert for what will advance the interests of all the people. He knows full well that the energy crisis demands a solution calling on the unselfish accord of industry and science in the use of available resources. He knows also that buried deep within the hills of our State lie unmeasured stores of potential power which await only practical exploitation in the public interest. A great deal of that spirit is in the present bill. We are proud of Senator Randolph. His active participation in the writing of this bill and in ironing out the areas of nonagreement between the Senate and the House is a powerful argument for its unquestioned acceptance by the Members of this body today.

Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

SENATE CONSIDERATION AND PASSAGE OF CONFERENCE REPORT ON H.R. 14368, JUNE 12, 1974

Mr. Muskie. Mr. President, the conference report on H.R. 14368, the Energy Supply and Coordination Act, is pending before the Senate. This legislation has been before the Senate in differing forms since last fall. It began as a part of the effort of Congress to respond to the energy crisis by enacting short-term energy conservation and environmental modification proposals.

Mr. President, the conference report on H.R. 14368 is a complex but limited measure. It is not, like the House bill, a crisis measure. It is not as general in its terms as the Senate bill. The conference report on this legislation is both a compromise and an improvement. It improves on both the House and Senate bill in that it makes more specific the requirements of each. It is a compromise between the House and the Senate bill because it accepts, in the short term—the period between now and June 30, 1975—much of the approach embodied in the House legislation and it adheres, in the long term—the period between now and January 1, 1979—to the limitations of the Senate amendment.

I think it is important to identify, for the purpose of adequate legislative history, the very significant differences between the House and the Senate approach to the issue of coal conversion. **[Sec. 2 ESECA.]**

As I indicated earlier, the House legislation was crisis-related. It was virtually identical to the previously adopted conference report on this issue—a conference report which was written during the period of severe energy shortage and oil embargo.

The Senate bill, on the other hand, recognized that the public's perception of the crisis had changed—that the energy crisis subsided with the termination of the Arab embargo—and that legislation of this kind must necessarily be within the framework of existing environmental constraints, rather than outside of those constraints.

The House bill was mandatory in the near term and voluntary in the long term. But in both short and long term, the House bill abandoned the existing statutory base for clean air regulations—public health-related primary ambient air quality standards.

The Senate bill in the near term permitted compromise of statutory clean air programs only on the basis of a demonstrated unavailability of fuel. In the long term, the Senate bill mandated coal conversions but insisted on maintaining minimum health-related air quality.

Under the House bill, the existing basis for clean air controls was suspended in favor of a new test to respond to crisis. The House bill would have permitted coal conversions to be required or to continue whenever no significant risk to health could be demonstrated.

The Senate bill proposed that energy self-sufficiency should be a function of our ability to maintain our clean air goals while reducing

our reliance on foreign fuels. The Senate bill completely barred coal conversions in areas where any primary ambient air quality standard was being exceeded and specifically barred any conversions which would cause the primary standard to be exceeded.

Mr. President, while two bills appeared similar, the intent of each body was sufficiently different that the conferees were confronted with an almost impossible task of putting together a conference report which was acceptable in purpose and in scope to the membership of both bodies. I think we have done this.

In terms of the Senate position, there is adequate protection against any long term coal conversion causing an unacceptable environmental impact. On the other hand, the House has achieved the short-term goal of their proposal. And the House has achieved two significant modifications of the Clean Air Act relating to transportation controls—provisions which were in earlier conference reports—provisions which my colleagues in the conference would have preferred to defer to a later time after a more complete review—but provisions on which the House insisted. **[Sec. 110(c)(2) (B) and (C) CAA.]**

The Senate also prevailed in two important respects unrelated to coal conversions. We have House agreement to extend the authorizations of the Clean Air Act for 1 year which will provide time to review carefully the implications of the Clean Air Act. **[Sec. 13 ESECA.]** And we have obtained House acceptance of a Senate provision which clarified the relationship between the National Environmental Policy Act and the Clean Air Act.

Without exception, the Clean Air Act actions will not be subject to the National Environmental Policy Act. **[Sec. 7(c) ESECA.]** This provision should reduce the potential for litigation and delay associated with the development and implementation of clean air regulations. It should improve the certainty and finality which the Congress sought in 1970 when it wrote the Clean Air Act. And, most importantly, it should end the effort of those who would use NEPA as a mechanism to compromise the statutory mandate for clean air.

My colleagues should note that the provisions of both the House and the Senate bill regarding auto emissions standards for 1976 vehicles were identical and remain so. **[Sec. 202(b) CAA.]**

Mr. President, I would like to expand the history of this legislation in terms of coal conversions and the Clean Air Act amendments. I have discussed in general the differences between the two bills. I have outlined the agreement. I have discussed Clean Air Act authorizations, the application of NEPA to the Clean Air Act, the auto emissions questions, and I have referred to the issue of transportation controls. I do not intend to discuss these matters in detail. The conference report and the statement of managers provide an adequate description of each.

The bill provides for a legislative basis to deal with three energy-related problems:

First, the conference report provides a statutory basis for the granting of variances for the period between enactment and June 30, 1975, whenever the Administrator of the Environmental Protection Agency determines that clean air compliance is not possible solely because of the unavailability of fuels necessary to meet the act's requirements.

This is a very limited provision. [Sec. 119(b)(1) CAA.] It is intended to respond to embargo type situations. If compliance with the Clean Air Act is dependent on fuels of certain pollution characteristics, and if fuels of those pollution characteristics—or improved pollution characteristics—are not available, then and only then the Administrator can suspend for the period of the unavailability of such fuels between now and June 30, 1975, the applicability of Federal, State or local clean air requirements. This is unilateral authority. It is intended to provide a quick response mechanism in the event another crisis occurs. It is not a method to grant variances where fuel is available but the price is high, nor is it a method to grant variances where fuel burning stationary sources have dragged their feet on installing necessary pollution control equipment.

This provision specifically and precisely permits the Administrator of EPA to suspend for not more than the period between now and June 30, 1975, the application of any stationary source fuel or emission limitation solely on the basis of the unavailability of fuels necessary to comply with that stationary source fuel or emission limitation.

Second, there is authority for the Administrator of the Environmental Protection Agency to suspend temporarily certain stationary source fuel or emission limitations if, as a result of an order by the Federal Energy Administration Administrator which prohibits a powerplant or other fuel burning stationary source from burning oil or natural gas, that source converts to coal. [Sec. 119(c) CAA.] This means that the Administrator of EPA can grant a suspension from certain clean air requirements in limited instances where facilities are now burning oil and coal, have the necessary capability and plant equipment to burn coal, and either began conversion to coal between September 15 and March 15 or converted to coal as a result of an order subsequent to enactment of this act. Unlike the situation which occurs when there is an unavailability of fuel, however, the Administrator of the Environmental Protection Agency cannot grant a variance from the clean air requirements unless he determines that to do so would not cause or contribute to emissions of air pollutants which would result in levels of such pollutants in excess of national primary ambient air quality standards.

Moreover, in order to assure that any such conversion does not itself cause primary standards to be exceeded, the Administrator must establish emission limitations, determine the pollution characteristics of coal to be used, or require other enforceable emission control measures as a condition of the suspension. [Sec. 119(d)(2)(A) CAA.]

Third, and perhaps the most significant provision of the coal conversion aspect of this bill is the provision which requires the Administrator of the Federal Energy Administration to issue orders prohibiting the use of petroleum products or natural gas to facilities which have on date of enactment of this act the capability and necessary plant equipment to burn coal for the period beyond June 30, 1975. [Sec. 2 ESECA.] This provision is mandatory with respect to powerplants and permissive with respect to other major fuel burning stationary sources. As with the temporary suspension authority, the FEA Administrator must make his determination on a unit-by-unit basis. And, a powerplant which has several units subject to such pro-

hibitions would have to obtain a separate suspension or extension from the EPA Administrator for each unit. [Sec. 119(d)(1)(B) CAA.]

This provision to the extent achieveable within the basic constraints of the Clean Air Act, is intended to reduce the burden and the reliance on foreign oil by increasing utilization of domestic coal. This provision [Sec. 119(c)(2) (C) and (D) CAA] requires that powerplants and other sources which are prohibited from using natural gas and petroleum products and which actually convert to coal comply with the existing implementation emission limitations or other requirements of implementation plans by no later than January 1, 1979. In the interim, these sources must assure compliance with primary ambient air quality standards and in areas where standards are exceeded, with applicable emission limitations.

This is the provision with which the conferees had the most difficulty because it was in the context of this provision that the conferees were treading on the most uncertain ground.

Not only were the conferees confronted with the basic policy question of mandating the use of a certain fuel in the long term but the conferees were also confronted with the need to cause the use of that fuel in a manner consistent with environmental objectives.

The House allowed an extension of the deadline for compliance with all applicable air pollution control requirements to not later than January 1, 1979, if a revised compliance schedule were approved and if no significant health risk would occur in the period of the extended compliance schedule.

The Senate bill required a similar extension of deadline to not later than January 1, 1979, only if a revised compliance plan were approved and primary ambient air quality were not exceeded during the extended compliance period. In addition, under the Senate bill, conversions were barred in air quality regions in which primary ambient air quality standards are now being exceeded.

The conference agreement permits an extension of compliance schedule to not later than January 1, 1979, only if, first, emission limits or other enforceable measures to maintain primary standards will be complied with; second, in any region in which primary standards are now being exceeded, requirements of the implementation plan applicable to any pollutant for which the national primary ambient air quality standards is now being exceeded are complied with; and third, the Administrator has approved a compliance plan.

An approved compliance plan must include adequate assurance that the plant or installation will obtain approval of a revised schedule for and means of compliance with all applicable preconversion implementation plan requirements no later than January 1, 1979. If the source fails to obtain an approved schedule, the compliance extension ceases, and the source is in violation of the Clean Air Act and subject to enforcement action.

The Administrator is required to promulgate regulations within 90 days requiring any source to which a compliance date extension applies to submit and obtain approval of its revised measures for and schedule of compliance. [Sec. 119(c)(2)(B) CAA.]

Such regulations should set forth deadlines for submittal and approval of the revised compliance schedule in order to assure earliest

possible achievement of the emission limitations in the applicable implementation plans. Failure to set deadlines in these regulations could result in unnecessary delay in achieving clean air goals. Also, early submittal and approval of revised compliance schedules is necessary to assure achievement of applicable emission limitations no later than January 1, 1979.

As noted above, long term mandatory conversion can only occur where national primary ambient air quality standards will not be exceeded. While the conference report narrows the scope of the Senate prohibition on such conversions in air quality regions where the primary standard is presently being exceeded, it maintains the thrust of the Senate position by prohibiting any conversion from taking place in any region where the primary standard for a particular pollutant is being exceeded if the effect of the conversion would be to cause emissions of that particular pollutant to exceed the limits specified in the applicable implementation plans. **[Sec. 119(c)(2)(D) CAA.]**

Mr. President, this means that if a region has not achieved the primary standard for oxides of sulfur and a conversion would cause sulfur oxide emissions to exceed limitations applicable to the plant in question, a conversion would be barred until the implementation plan limitations could be achieved. This is the so-called regional limitation.

Further, Mr. President, even if there is no "regional limitation" on the conversion, if the result were to cause emissions which would cause or contribute to concentrations of pollutants in excess of the primary standard—the "primary standard condition"—the conversion would be delayed until the plant was capable of achieving emission limitations or other enforceable measures which would assure compliance with the primary standard condition.

It is important to note that this policy does not prohibit conversions—it only prohibits those conversions limited by the "primary standard condition" or the "regional limitation" until the powerplant or other major installation has installed the necessary pollution control capacity—or obtained clean coal—which permits the unit in question to meet applicable emission limitations.

In other words our purpose is to give the Federal Energy Administrator authority to put plants with the capability and necessary plant equipment on notice that they will be required to convert to coal by a date certain with legal requirement that the plant or installation acquire the necessary pollution control capability to assure compliance with the Clean Air Act at the time conversion occurs. Failure of the plant to acquire the control equipment or clean coal would not be a defense against the FEA prohibition. If the capability to comply were not acquired, the plant or installation would be in violation of Clean Air Act emission limitations and subject to statutory and criminal penalties.

The inclusion of the noncriteria pollutant requirement in no way relieves the administrator from his nondiscretionary duty to develop and publish criteria for such pollutants in order to trigger national standards as required under the Clean Air Act. This provision **[Sec. 119(d)(3)(A) CAA]** is included in recognition that some pollutants may need to be regulated before that process can be completed. It recognizes that the air quality standards process entials a time lag. We

deemed it unwise to wait for the completion of that entire process before providing some protection from these pollutants.

Mr. President, this bill is special legislation to deal with a special situation. It is not intended to set precedents. The bill is temporary in time and limited in application.

The auto emissions question is resolved for 2 years. The statutory standards will take effect in 1978 which should provide more than ample time to achieve them. **[Sec. 202(b) CAA.]**

The transportation control limitations are only temporary. Congress must determine whether parking surcharges, parking management regulations and other transportation control measures are necessary and appropriate aspects of urban pollution control strategies. **[Sec. 110(c)(2) (B) and (C) CAA.]**

The variance authority both as a result of unavailability of fuels and short-term coal conversions is temporary. This authorization is for 1 year. While the NEPA–EPA clarification is not time limited, this issue was intended to be resolved in 1969 and therefore is neither new or precedent-setting. **[Sec. 7(c) ESECA.]**

There are significant limitations on the authority of FEA to prohibit the burning of petroleum products or natural gas.

Only those units of powerplants and other major fuel burning stationary sources with the "capability and necessary plant equipment" on the date of enactment of this act may be subject to an FEA order and only those which actually convert to coal—as opposed to facilities which meet the capability and equipment test but presently burn coal—can receive either a short-term suspension or long-term extension under the Clean Air Act. **[Sec. 2 (a) and (b) ESECA.]**

The test of "capability and necessary plant equipment" is important. As the conference report indicates, each plant or installation would have to have had the capability to burn coal at one time. Also the addition of components necessary to renew that capability would have to be simple and inexpensive.

The conferees were aware of the proposed administration amendment to require that necessary plant equipment only be reasonably available. This amendment was rejected by both House and Senate because it suggested a broader application of the FEA authority to effect conversion than intended by either body.

One example of the kind of modification necessary to facilitate conversion is discussed in a copy of a letter from Charles E. Monty, vice president of Central Maine Power Co. to Mr. Clark Grover, Director, Coal Switching Task Force, Federal Energy Office.

This plant and others like it would simply not meet the test of necessary plant equipment and capability required by the act, even though such equipment might be reasonably available as proposed by FHA and rejected by the Congress.

Finally, the necessary plant equipment has to be available to the unit for which conversion is required on date of enactment, not at some later date.

An important clarification in the conference report relates to enforcement of interim procedures to assure compliance. Senate conferees insisted that the Environmental Protection Agency's determination that emissions from coal converters would not cause primary standards

to be exceeded must be articulated in emission limitations or other precise, enforceable measures for regulating what comes out of the stack. [Sec. 119(d)(2)(A) CAA.] The conference report on this bill underscores the fact that it is not ambient standards which are enforced but emission limitations or other stack related emission control measures. Ambient standards are only a guide to the levels of emission controls which must be achieved by specific sources. In 1970, we recognized that a control strategy based on a determination of ambient air pollutant levels in relation to each individual source would be unenforceable. Existing clean air implementation relies specifically on the application of enforceable controls aganst specific sources. We have continued that procedure in this law.

To the extent intermittent control strategies are permitted as an interim measure applicable to coal conversion, they too must be enforceable. The bill specifically and precisely sets forth that such strategies must be enforceable. They must be enforceable by the Administrator of EPA [Sec. 119(d)(3)(A)(i) CAA] not the States—not the local governments—not polluters—but by the Administrator of EPA who will have the responsibility for imposing such strategies if they are to be allowed at all.

It may be a non sequitur to suggest that intermittent control strategies are enforceable by EPA. An analysis of EPA's monitoring is severely limited. Budgetary constraints have meant that necessary monitoring equipment and personnel have not been available and in fact the situation has gotten worse in certain regions where EPA has entirely abandoned the monitoring effort to the States. An EPA memo states:

> As a result of decentralization of the national air monitoring networks, required information to define levels of non-criteria pollutants is not available to the scientific community. Specifically, data on sulfates, nitrates, ammonia, aerosols, fine particulates and other non-criteria pollutants is not being obtained on a scientifically defensible basis nor in a timely fashion.
>
> The existing sites of the former National Air Sampling Network (NASN) are not suitable to serve as a foundation of an experimental network. They are generally incorporated into the States' Implementation Plans and are operated as such. Lacking direct control of these stations, because of decentralization to the Regions, EPA has to rely on voluntary cooperation. The net result is an ill-defined program; changing sampling schemes, not being able to demand additional quality control and non-uniform operation of the network. EPA simply cannot expect State and local agencies to conduct such a program over and above their present monitoring requirements.

While this information was requested in relation to so-called non-criteria pollutants, I am advised that it is generally applicable to pollutants for which standards have been set.

Even if the State monitoring efforts were adequate, we cannot rely on the States to enforce the requirements which result from this legislation. Most States would prefer to make the decisions on coal conversions themselves. They would prefer to determine the extent to which their clean air requirements are modified without Federal interference. They would prefer to enforce emission limitations of their own implementation plans to meet the standards which they have determined they want to meet and not just the primary standards as required by this act.

And certainly the polluters themselves cannot be depended upon either now or in the future as a source of information as to the ade-

quacy of the intermittent control strategy. An April 1973, EPA paper states:

An intermittent control system is a very tenuous mechanism to protect air quality. At TVA, a utility with a reputation for concern for maintaining "acceptable" air quality, the decision to take control action is made by persons whose performance is judged by their capability to produce power at a minimum cost. Their concern for the environment rarely, if ever, is a significant factor in evaluating their "efficiency." The operation at Paradise may at times severely circumscribe the implementation of controls. The outlook for a truly effective use of an intermittent control system by smelters and private utilities is not encouraging.

EPA will have the responsibility and, therefore, must have the capacity to enforce these strategies. And the information developed on compliance with intermittent controls must be readily available so that citizens can act under the citizen suit procedure. This would not be possible if EPA relied on the private monitoring efforts of the polluters.

Yet another reason for caution in considering alternative or intermittent control strategies is identified in a statement presented by Mr. Christopher P. Quigley, head, mechanical and structural design division, engineering and construction department, at the American Power Conference.

He said:

Finally, before committing such large investments—to scrubber—we must assess the probability that utilities may be allowed to institute alternative and more economical methods for achieving SO_2 control such as the use of a fuel switching program based on meteorological conditions.

Endorsement of inadequate or unenforceable interim control measures as continuous control strategies could negate ongoing developmental activities. Our efforts to force technology would be further eroded.

Mr. President, as I have amply indicated. I have serious doubts about the viability of intermittent control strategies, whether or not EPA has the capacity to monitor the ambient impact of emissions from coal conversions. These doubts are summarized in the hearings of the Subcommittee on Environmental Pollution. I ask unanimous consent that annotated excerpts from the subcommittee hearings and files be included in the Record at the close of my statement.

It is these doubts that lead me to underscore the fact that no one should view limited application of enforceable strategies related to this legislation as a precedent for future legislation or as a reinterpretation of the requirements of the existing law which bar the application of intermittent control strategies as a substitute for emission limitations.

Mr. President, the legislation points out both the significance of the Clean Air Act as well as the frailities of our efforts to protect and improve our environment. The primary reason that we are talking about coal conversion today is because the users of fuel in this country chose the cheap and convenient way to meet clean air requirements. Rather than develop the technology which would make each fuel burning stationary source capable of using domestic fuels, the power industry and others switched to low sulfur foreign fuel.

Most utilities and others have steadfastly refused to participate in any major effort to develop the technology of stack gas control. To the

extent that anyone has come forward to demonstrate stack gas control technology, these same utilities have led the effort to discredit that technology and the credibility of those who would propose it.

I do not know whether effective stack gas control technology for major powerplants is available or not. But I do know that unless powerplants and other major fuel burning stationary sources are required by law to achieve a high degree of emission reduction from their stacks without regard to the fuel to be used, we will never know whether or not technology is or can be made available.

Our dilemma simply put is as it always has been—those who pollute also control the technology of pollution control. For more than 10 years I have participated in the development of legislation to impose an environmental ethic on these polluters. To encourage them to develop the technology of pollution control, I have opposed efforts to determine, by legislative fiat, the choice of technology.

Both the Clean Air Act and the Federal Water Pollution Control Act articulate pollution control requirements as performance standards rather than technological standards. EPA, too, is expected to articulate regulations in terms of performance rather than technology. Those laws demand only that the pollution controls be enforceable on a continuous basis against precisely defined criteria, so that both regulators and the public will know that the performance test is being met.

Thus far, our reliance on performance standards has been only partially adequate. The automobile companies refused to change their technology and so we have catalysts. The utilities refused to develop new technology and so, when foreign oil disappears, we have an energy crisis.

We have come only a small part of the way in developing an environmental ethic. We have not even begun to press our technological capability. We have only stirred the innovative instincts of those in the private sector who profit from pollution control equipment. We have moved only a little toward the best and the cheapest ways to transfer pollution to a recovered resource rather than a discharged waste.

This legislation is but one example of the failure of industry to move aggressively. But the fact that it does not abandon the clean air goals that we set in 1970 and earlier years is an expression of the national commitment of the goals of the Clean Air Act.

Mr. President, there is a typographical error in the conference report. **Section 119(c)(1)** refers to "expanding substantial sums to permit such source to burn coal." The word "expanding" should have been "expending."

I move the adoption of the conference report.

Mr. President, I want to commend all the members of the conference committee for the constructive and cooperative roles they played in developing this legislation. I particularly want to say how much I appreciate the efforts of the chairman of the Senate Public Works Committee, the gentleman from West Virginia (Mr. Jennings Randolph). He was always there to help bring us to a common ground, to help find the solution to issues that would allow a breakthrough and resolution of problems. His unfailing efforts made this legislation possible. His decades of efforts to make this country aware of the

energy problems this Nation faces gave him an unusual ability to merge the need for energy with the need for clean air.

I also want to point out the assistance given by the ranking Republican of the Senate Public Works Committee, the gentleman from Tennessee (Mr. Howard Baker). He has never lost sight of the environmental goals this Nation should pursue, and his efforts in balancing those goals with the energy needs of the country were crucial in achieving the agreements laid out in this legislation. The Nation should know of his constructive role.

This legislation could never have been completed without the masterful guidance of the gentleman from West Virginia (Mr. Harley Staggers), chairman of the House Commerce Committee. When others might have abandoned the cause he continued to press this legislation along, meeting the arguments of all sides, and adjusting and improving the bill in light of those arguments. In fact, this was the approach of all of the House conferees, as well as those of the Senate. The mutual cooperation of all concerned deserves commendation, and brought about the agreement now before the Senate.

Mr. President, I do not think there is any need to discuss this matter at length. It has been before the Senate in differing forms since last fall, previously as a part of a broader so-called emergency energy bill. It has been agreed to by the Senate basically in legislative form. The conferees have reached agreement, as they did twice previously.

I ask unanimous consent to have material in connection with this matter printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., March 2, 1973.

Subject, Intermittent Control Systems (ICS).

To, Bernard J. Steigerwald, Director, Office of Air Quality Planning and Standards.

The 53 page Staff Report on Intermittent Control Systems (ICS) submitted to our Division by OAQPS is a lengthly and complex description of a relatively simple process. Major sources of sulfur dioxide emissions are attempting to exploit this process in order to avoid the cost of responsible environmental management based on reduction of emission through conventional methods of permanent emission control. We are particularly perplexed as to the reasons that the OAQPS report was submitted to our office on February 27, 1973, with a request for comments on or before March 2. Although the concept of ICS is simple, enforcement of ICS is not. Nevertheless, in the limited time available for review, we have determined that ICS is unacceptable from an enforcement standpoint.

We cannot comment on the report without drawing attention to several basic errors detected in our review. The report states "The effectiveness of ICS is intuitively obvious for short term standards" and "ICS is a superior approach to achieving annual standards as well." Experience tells a different story. ICS was attempted in Washington and Montana with sufficient lack of success to encourage the Puget Sound Agency in Washington, and the State of Montana to adopt direct emission standards, what the OAQPS report calls permanent emission controls (PEC). The failures were attributed chiefly to (1) insufficient curtailment of operations due to inability to forecast adverse meteorological conditions, and (2) information to prove a violation was completely dependent on self-monitoring by the source without an effective means of policing the monitoring stations. Similar experiences have been recorded in New Jersey, Kentucky, and Pennsylvania. Congress recognized the inherent problems of enforcing ambient air quality standards and deleted from the 1970 Clean Air Act any requirements that enforcement of emission regulations be conditioned on violations of ambient standards. That the

OAQPS report would claim ICS is superior to PEC for achieving annual standards is indeed surprising. ICS simply is not designed or needed to achieve long term air quality standards.

We feel the OAQPS report misinterpreted the philosophy of the Clean Air Act and its legislative history with respect to the importance of cost of controls to meet standards. Since national standards must be attained, the cost of a necessary control system is irrelevant to the acceptability of the control technique or regulatory approach utilized to attain the standards although cost is of course important to the polluter.

New source performance standards (NSPS) provisions within Section 111 of the Clean Air Act did reference cost by defining a standard of performance as "a standard for emissions of air pollutant which reflects the degree of emission limitation achievable through the application of *the best system of emission reduction* which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated." (Emphasis added.) An ICS system such as the one operated by TVA at its Paradise Power Plant obviously is not what Congress had in mind as "the best system of emission reduction", since the Paradise Plant achieved only a 0.13% reduction in annual SO_2 emissions in 1972. In addition, since the factors described on page 36 vary from plant to plant, there would be no way to set a *national* standard uniformly applicable to all new sources in the class, which is the intent of Section 111.

The OAQPS report describes two requirements as necessary and essential prior to approval of any ICS for sulfur dioxide emissions. These are that (1) reasonably available control (of the PEC-type) be applied to limit emissions of other pollutants, and (2) good faith efforts (presumably PEC) must be made to augment ICS leading to a reduction in annual emissions. The report says monitors similar to those employed in an SO_2 ICS are not available for particulate matter. This appears to be only a technicality, since continuous tape samplers are available for particulate matter and continuous monitors for other pollutants also are available. If ICS is legally and technically acceptable for SO_2, it should be equally acceptable for particulate matter and all other pollutants. Thus, this prerequisite of applicability of ICS exclusively to SO_2 cannot be met. The other prerequisite, that of requiring PEC along with ICS, is impractical from a legal standpoint. If ICS is an acceptable method for achieving emission reductions to meet national standards, it would appear that no other type of control legally could be required within the authority of the Clean Air Act. Hence both necessary prerequisites are legally impractical.

The OAQPS report advocates an ICS based on enforcement of ambient standards with fines used as "incentives" to operate the system conscientiously. The large sources for which ICS is recommended can well afford to pay many fines rather than install alternative permanent emission controls. The nature of ICS encourages violations of ambient standards and hardly qualifies as maintenance of the standard. Consider the case of a source which has obtained EPA approval of its operations curtailment procedures and has apparently made good faith efforts not to exceed ambient air quality standards. Assume this source exceeds a standard anyway, and reports this violation to EPA. We do not anticipate the fine a judge would impose for such infraction would be large enough to offer an incentive for control, particularly since the curtailment procedures followed were approved by EPA. (One can afford to pay a lot of $25,000 fines rather than install control systems costing millions.)

The OAQPS report suggests various combinations of PEC and ICS. One alternative (number 8) is to "Require RACT for attaining primary standards but allow ICS for attaining secondary standards." Any type of control acceptable for attaining secondary standards would be acceptable for attaining primary standards. Therefore, option 8 probably is illegal; in any event, it seriously weakens any arguments EPA may have for requiring permanent controls.

It was noted that all air quality monitors about the Paradise Power Plant were in a sector which the plume passed over only 10% of the time. Perhaps it is inappropriate to claim an ICS is effective when 90% of the time the plume impacts in an area where no monitors are placed. By careful placement of monitors, it should be possible to demonstrate that practically any ICS scheme "works."

Enforcement of ICS, as the report admits, be complex. Fines levied pursuant to violations of ambient air quality standards cannot be used to prevent these

standards from being exceeded in the future, as the Act requires. This is an established Agency policy initially presented by DSSE, OEGC, in a 1972 position paper (copy attached). The only alternative is an ICS operated on a daily variance basis, with provisions for revoking the variance should changing meteorological conditions warrant such revocation. This would require the control agency, whether State or Federal, to provide meteorologists on a 24-hour/day basis. Any source using ICS must be required to reduce emissions at the direction of an authorized Agency meteorologist, whether or not the source's meteorologist orders a reduction. There is a distinct legal problem involved in granting daily variances, but it is felt this problem can be resolved.

Additional conditions must be met for ICS to be enforceable. A plume can be extremely narrow (less than 15°) and can cause maximum ground level concentrations at distances exceeding 5 miles. Simply to guarantee that the plume would pass over a monitor would require a "circle" of 24 monitors (assuming a plume angle of 15). To cover a downwind range of 5 miles at ½ mile intervals would require 240 monitors. With this enormous number, illegal 1-hour concentrations from "looping" plumes could avoid detection, but such a system probably would serve to validate meteorological predictions. In combination with a suitable air quality display model, the number of monitors could be reduced to perhaps 50, with a substantial percentage of these operated by the Agency to ensure "accuracy" of the remainder. For terrain where models cannot be developed, the full complement of monitors will be required. Any enforceable ICS must provide for extensive recordkeeping, for both ambient and emission data.

An enforceable ICS could include no overriding factors which would serve to prevent emissions reduction when environmental considerations indicated the necessity of such reduction. For example, TVA stated that electrical load requirements could make curtailment impossible, even though environmental considerations required the curtailment. ASARCO said protection of equipment might necessitate continuing operation to some extent when atmospheric conditions required total shutdown. Production demands could not influence operation of the system as ASARCO implied was the case. At ASARCO the plant manager could, and did, override the meteorologist's determination to curtail operation.

We feel that the economic advantages of ICS will make the system, even with its enforcement requirements, acceptable to large sources. It may be necessary for sources wishing to exploit the advantages of ICS to reimburse a control agency for the additional cost of administering such a system.

It should be noted that our comments relate to a *permanent* ICS, rather than an *interim* ICS. If ICS is adopted as an interim measure to be employed until permanent emission controls (acid plants, etc.) can be installed, the Act allows greater discretion by the Administrator with respect to enforceability. Since an interim measure can be whatever "the Administrator determines to be reasonable"; an interim ICS could be designed which would closely approximate the system OAQPS recommends. Additionally, such an interim system would have little impact on State or Federal environmental programs, and would not conscience a fundamental change in Agency policy. We do not wish to appear to advocate such a system, but we do feel the option of an interim ICS differs markedly from permanent ICS in enforceability requirements and may be a workable solution to the problem of control. Essential elements for such an interim system include:

1. Sources must assume liability for any violation of NAAQS. Where there is more than one source, each must be held accountable for any violation. Apportioning of blame is relevant only in a Court's consideration of the amount of a fine, not in the determination of a violation. Sources should be precluded from showing the violation was the fault of others; i.e., there should be some form of absolute liability;

2. Failure to follow the approved operations manual must constitute a violation;

3. Sources must agree that any violation after the first is a continuation of the first and thus no new notice of violation is required and criminal penalties are immediately applicable;

4. Extensive recordkeeping requirements must provide for retention of data reflecting both air quality measurements and stack emissions.

These requirements reflect measures this Division considers reasonable to make an interim ICS something more than a license to pollute. They are not adequate to ensure the degree of enforceability necessary for a permanent ICS.

If you wish to further discuss the enforceability of ICS, please feel free to contact me.

WILLIAM H. MEGONNELL,
Director, Division of Stationary Source Enforcement.

Attachment.

ENFORCEABILITY OF INTERMITTENT CONTROL SYSTEMS (ICS)

APRIL 21, 1972.

MR. DON R. GOODWIN: Attached is a paper giving our position on enforceability of an ICS as you requested. After careful analysis it is our conclusion that ICS is unenforceable and its efficiency unknown to achieve and maintain the national standards. Mr. Baum in the Office of General Counsel has reviewed this position paper and gives his concurrence.

I believe our position is nearly the same as OAP with the exception of putting a date-certain on the interim use of ICS. In our opinion, a date-certain for installation of permanent controls is essential and no plan should be approved or promulgated that does not contain such.

WILLIAM H. MEGONNELL,
Director, Division of Stationary Source Enforcement.

DIVISION OF STATIONARY SOURCE ENFORCEMENT, OFFICE OF ENFORCEMENT AND GENERAL COUNSEL

Position paper on the acceptability of intermittent control systems for achieving and maintaining the national ambient air quality standards.

ISSUE

The Office of Air Programs, EPA, has requested the advice of the Office of Enforcement and General Counsel regarding the acceptability of an intermittent control system for meeting the national standards. An intermittent control system (ICS) is defined as any procedure to temporarily curtail emissions through reduced source operations as may be needed to prevent air quality standards from being exceeded.

There are basically two types of intermittent control systems, one based on enforcement of a violation of an ambient air quality standard monitored by ground-level instruments, and one based on enforcement of predetermined emission rates calculated by meteorological forecasting and monitored by in-stack instruments. In both cases since production is curtailed only on a temporary basis it is not likely that total annual emissions will be noticeably reduced, but only that emissions will be reduced during adverse meteorological conditions and increased during favorable meteorological conditions.

BACKGROUND

Section 110(a)(2)(B) of the Clean Air Act, as amended, provides that the Administrator shall approve an implementation plan if "it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including but not limited to, land use and transportation controls . . ." Section 110 of the Act does not provide a definition of the meaning of this requirement for an implementation plan. However, the Senate report (91–1196) of the Committee on Public Works on pages 11 and 12 provides some insight on this matter as evidenced by the following comments:

"The establishment alone of ambient air quality standards has little effect on air quality. Standards are only the reference point for the analysis of factors contributing to air pollution and the imposition of control strategy and tactics. This program is an implementation plan . . . The Committee bill would establish certain tools as potential parts of an implementation plan and would *require* that emission requirements be established by each States for sources of air pollution agents or combinations of such agents in such region and that these emission requirements be monitored and enforceable. *In addition to* direct emission con-

trol. other potential parts of an implementation plan include land use and surface transportation controls . . ." (emphasis added)

The Administrator has elaborated on this requirement, as interpreted by EPA at the recent oversight hearings. He stated:

"The problem is that whenever we adopt a control strategy, the purpose of the strategy is to reduce emissions in that particular air quality region so as to meet the ambient air quality standard and what we mean by emission limitations is really emission reduction so that anything which reduces, including the transportation controls that Senator Randolph was concentrating on, anything that reduces the total emissions in that air quality control region so as to meet the air quality standards, as I read the Act, I have to approve as a control strategy that in fact complies with the Act."

In commenting on a question whether EPA would approve a plan with a "closed loop theory" (another term for an intermittent control system), the Administrator stated: . . . "only if we can become convinced that such a closed loop theory, or any strategy that is adopted, will in fact achieve the ambient air quality standard and can be enforced."

The acceptability of an intermittent control system was evaluated in terms of the requirements of the Act, the quoted statements above.

Question No. 1. Is an intermittent control system that provides for enforcement after violation of an ambient air quality standard approvable by EPA?

Answer No. 1. No; the purpose of an implementation plan is to prevent a violation of an ambient air quality standard, by the enforcement of specific measures applicable to sources. A plan which on its face provides for enforcement only after a standard has been exceeded does not provide for the achievement and maintenance of the national standards.

Question No. 2. Is an intermittent control system that provides for enforcement on the basis of predetermined emission rates based on meteorological forecasting techniques and monitored by in-stack instruments, approvable by EPA?

Answer No. 2. Although this type of intermittent control might be legally acceptable, it is unenforceable because it is too complex and unmanageable and places an unreasonable burden on EPA and the States. Moreover, its efficacy is uncertain. This type of control strategy is unacceptable as a permanent means of achieving and maintaining the national standards. It is recommended that ICS be restricted for use in certain limited situations discussed below.

DISCUSSION

The discussion is numbered to correspond to the questions and gives the basis of OFGC's opinion.

1. Experience with enforcement of an ambient air quality standard on an intermittent basis has been unsatisfactory. The system has validity only for a point source that is sufficiently remote to be unaffected by emissions from other sources. An extensive ambient monitoring network is required—one that is beyond effective policing by a control agency but rather depends more on the "honor system". We are aware of certain experiences with such systems at large point sources in the States of Washington and Montana. Numerous violations occurred during the period when curtailment systems supposedly were in effect. Penalties were assessed but to no avail. Principal reasons for failure of ICS have been that (1) sources did not curtail operations as often and to the degree needed usually through inability to forecast meteorological conditions requiring curtailment; (2) direct cause-effect relationship for violation of an air quality standard has been difficult to prove, and (3) information to prove a violation was completely dependent on self-monitoring by the source without an effective means of policing the monitoring stations. After this experience with enforcement of ambient air quality standards, the Puget Sound Agency in Washington and the State of Montana adopted direct emission standards.

This experience is not limited to these States. The States of New Jersey, Kentucky and Pennsylvania also experimented with dispersion methods for enforcement of air quality standards for many years and eventually all came to renounce such methods. In 1970 the Congress recognized the problem of enforcing an ambient air quality standard and deleted the requirement that enforcement be conditioned on violations of such standards. We do not consider this type of intermittent control system to be enforceable.

2. An intermittent control system can be refined to provide for enforcement of emission limits. Such a system would have to be developed separately for each affected source. Although, probably due to its complexity, to date, no such system has been fully developed. It would appear that it is not possible to develop an ICS system that includes emission limitations before July 31, 1975. Therefore, if EPA were to accept this concept, the development of the control strategy would have to take place beyond the statutory deadline.

Although this is a sufficient basis for rejection of an ICS as a permanent control strategy, there are more important technical and enforcement problems leading to the same conclusion. This type of intermittent control system is much like an emergency episode plan which is required by all States as part of the implementation plan. However, ICS is not backed up by the enforcement power that EPA or the States have during an emergency; that is the power to shut down sources prior to even giving the source an opportunity for a hearing. This power is essential since *shut down* of source operations is the *control strategy* in an ICS system and this decision cannot be dependent on the source operator who is primarily concerned with meeting production demands. Lack of this power by EPA or the States would make an intermittent control system difficult to effectively enforce.

TVA pioneered the effort to develop ICS and has documented its experience in several publications. TVA has many reservations about the technical feasibility of the system and considers it to be an interim method to be used only until permanent emission control techniques can be installed. The following comment was made by TVA in a statement presented at a hearing of the New Mexico Environmental Improvement Board on October 19, 1971:

"At the outset we should like to emphasize the "interim" aspects of this type program, as in most cases, it should serve only as an *interim method* for maintaining air quality until such time when a satisfactory SO_2 removal process can be installed. Also, it should be emphasized that this type of control program may not be feasible for all plants as its application depends on plant design and operation, regional and local meteorology, local terrain effects, power system size and flexibility, and regional air quality goals." (emphasis added by TVA)

TVA comments in the same paper that they have been working with interim operational controls since 1955 at their Kingston steam plant. TVA goes on to describe a highly sophisticated operational control program at their Paradise steam plant. Several years were spent for detailed studies in developing a system for Paradise since each operational control scheme must be tailor-made.

For the Paradise Steam Plant the nine criteria listed below were developed by TVA for the limited mixing layer model which was found to be critical for this large power plant:

(1) Potential temperature gradient between stack top, 180 m. and 900 m.
(2) Potential temperature gradient between stack top, 180 m. and 1500 m.
(3) Difference between daily minimum and maximum surface temperature.
(4) Maximum daily surface temperature.
(5) Maximum mixing height.
(6) Maximum mixing height and plume centerline height.
(7) Time for mixing height to develop from plume centerline to critical mixing height.
(8) Mean wind speed stack top and 900 m.
(9) Cloud cover.

TVA further states that for some plants more than one model may be necessary and that certain physiographic features, e.g., valley ridge configuration may cause frequent occurrences of high surface concentrations involving one or more plume dispersion models, thus making operational control not feasible.

Emission limitations are determined daily for the Paradise plant. A TVA meteorologist takes daily early morning meteorological measurements, including temperature profile (by instrumented fixed-wing aircraft) and wind profile (by standard pibal) from surface to 7000 feet. These data along with input from a 15 station ambient monitoring network plus mobile sensing units are processed by a computer for limiting control. The special computer program provides the limiting SO_2 emission rate in terms of megawatt load generation. Even so the system failed on 18 percent of the days to forecast the need for control actions.

It is apparent that an ICS is highly complex and its success (limited as it is) depends on the good faith of the source operator. Neither EPA or the States would have sufficient resources to review this system or to police it if put into

effect where the emission limit can vary on a daily basis. Therefore, our position is that ICS must be restricted to an interim measure in certain limited situations which EPA will define.

ICS should be used as an interim measure only when reasonably available technology cannot achieve the primary standard by July 31, 1975. "Interim" is defined as until 1977 for achievement of the primary standards inasmuch as this is the latest date allowed by the Act for achievement of the standards by a permanent enforceable control strategy. Further as regards achievement of secondary standards, "interim" is defined as such "reasonable time," established by OAP, when practicable technology could be developed. The situations where ICS is acceptable as an *interim* measure should be limited to the following:

(a) Sources for which reasonably available control technology is inadequate.

(b) Point sources that are sufficiently remote to avoid interference to the ICS system from other point sources or background.

(c) Pollutants for which in-stack monitors are available for continuous measurement.

(d) Short-term standards only, i.e., 3-hour secondary standard and 24-hour primary standard.

We are particularly concerned that any ICS system that is approved or promulgated contain a date-certain when permanent controls will be instituted.

FEDERAL ENERGY OFFICE,
Washington, D.C., May 20, 1974.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Public Works,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Energy Supply and Environmental Coordination Act of 1974, H.R. 14368, which is now under consideration by the conferees, contains provisions allowing the Administrator, Federal Energy Administration, to order major fuel burning installations, including electric power plants, to cease burning natural gas or petroleum products as their primary energy source. It also has complementary provisions which amend the Clean Air Act to provide that a plant converting to coal under such an order cannot be prohibited by reason of the application of any air pollution requirement from using coal until January 1, 1979, provided the emissions from the source do not cause certain standards that are specified in the bills to be exceeded.

The provisions of H.R. 14368 will provide a flexible, useful approach to short-term coal conversions; sections 119 (a) and (b) contain provisions applicable through the end of the 1970's. These short-term conversions, however, are only an emergency measure. Only long-term conversions to coal will permit us to achieve our goals of energy self-sufficiency. As you know, the Administration has submitted to the Congress, by letter dated March 22, a package of amendments, of which the coal conversion provisions are only a part, that are designed to encourage these long-term coal conversions. We urge the Congress to turn their attention to these additional amendments as soon as they complete work on H.R. 14368.

We are also concerned with several specific aspects of the coal conversion provisions of H.R. 14368. We would like to take this opportunity to bring these concerns to your attention and suggest possible alternative language.

Coal conversion provision.—Our first concern is with the language of the Senate-passed Bill which provides that a suspension under Section 119(b)(1) is conditioned on the source being "located in an air quality control region in which applicable National primary ambient air quality standards are not being exceeded." This language would unnecessarily impair our ability to convert plants to coal.

A number of air quality control regions cover large geographic areas. The air quality control regions may have a metropolitan area combined with a large rural area. Levels exceeding primary ambient air quality standards are generally found in the densely populated areas. However, a number of power plants that are candidates for conversion are located in suburban or rural portions of regions with a major metropolitan center. Thus, it is likely that a number of non-urban power plants may be excellent candidates for conversion (based on a plant-by-plant analysis of predicted ground-level pollutant concentrations), yet be blocked from conversion because primary ambient air quality standards are being exceeded many miles away. In many such cases, the converted source would not con-

tribute to any violation of the primary ambient air quality standards being exceeded in the urban area.

Accordingly, we believe that the test for conversions should be solely on a plant-by-plant basis. The priority classification of an air quality control region should not be a constraint. The latest data available to EPA show that during 1972 primary ambient air quality standards for sulfur dioxide, were exceeded in 13 to 15 air quality control regions. The primary ambient air quality standard for total suspended particulates was exceeded in 102 air quality control regions during that same period. There are 247 air quality control regions in the country.

A preliminary analysis of the situation shows that 8 of 10 plants analyzed by EPA and FEO as candidates for long-term conversion would not cause to be exceeded or exceed the primary ambient air quality standards, but would not be candidates for conversion under the Senate provision because of the air quality control region in which they are located. This analysis is based on the most recent published data on the ranking of AQCR's. A situation that vividly illustrates the point includes the Morgantown and Chalk Point plants in Maryland which emit pollutants into the same air shed yet are situated in different air quality control regions. Under the formula of the Senate bill, one could be converted, while the other one could not, despite the fact that both plants could meet primary standards.

Further, the addition of the air quality control region test would insert further uncertainties and factors for dispute into the process of identifying plants that are candidates for conversion. Regional priority classifications are based on imprecise procedures. We understand that air quality monitoring data or diffusion modeling calculations may serve as the basis for a priority classification determination. Often the classification for an air quality control region is based on monitoring results from only a few, or even only one, monitor operated by Federal, state or local agencies. EPA quality control studies of monitoring programs have revealed deficiencies in both accuracy and consistency, and a significant margin of error from instrument malfunctions as well as inedaquate procedures.

Finally, the data used to rank air quality control regions are generally up to a year or more out of date at the time of the reclassification. Such data and the resulting regional rankings are nearly functionally irrelevant when emissions from a converted source will not in fact occur for some time. Some plants ordered to convert may not actually begin to burn coal for two to four years, which is the time needed to open new mines.

Accordingly, the above reasons clearly indicate to us that the proper approach is to make determinations on a plant-by-plant basis. Such a procedure should rely on state-of-the-art diffusion models and assessments of existing, relevant air monitoring data.

The House-passed bill has no language limiting the provisions of section 119(b) to regions where primary air quality standards are not being exceeded. We recommend conforming the Senate bill to the House-passed bill by deleting from section 2 of the Senate-passed bill the following words, appearing in the first sentence of section 119(b)(1) of the Clean Air Act: "and which is located in an air quality control region in which applicable national primary ambient air quality standards are not being exceeded."

If the conferees wish to make it absolutely clear that a statutory source may not cause or contribute to concentrations of air pollutants in excess of national primary ambient air quality standards, the first sentence of section 119(b)(1) can be further amended by adding at the end of that sentence: "subject to the provisions of subparagraph (b)(2)(A)."

A conforming amendment is needed in subsection 8(a) of the Senate-passed bill, which deals with FEA-ordered coal conversions. The second sentence of that subsection should be amended to delete the following phrase: "the installation is located in a region described in the first sentence of section 119(b)(1)."

Plant equipment for burning coal.—Section 8(a) of the Senate-passed bill and section 10(a) of the House-passed bill provide that conversions can be ordered only for plants which on the date of enactment have "the capability and necessary plant equipment to burn coal". We understand that it is the intent of the Congress to permit conversions to be ordered where necessary plant equipment is reasonably available and that it is not necessary for a plant to have *all* the equipment already in place. To avoid any uncertainty, however, we urge the conferees to state this intent in the conference report as was done in the House Report on page 28.

Energy information reporting.—The House bill contains, in Section 11, provisions authorizing the Federal Energy Administrator to collect energy information he determines is necessary to assist in the formulation of energy policy or to carry out the purposes of the Act or the Emergency Petroleum Allocation Act.

The Senate Bill contains no such provision.

As you know, the recently enacted FEA legislation now provides the Administrator with broad authority, including subpoena powers, to gather energy information. In view of the enactment of the FEA bill, we strongly support the approach taken by the Senate of deleting Section 11. This will avoid duplication, confusion and conflict with the information gathering sections of the FEA Act.

In particular, subsection 11(e) of the House version is particularly objectionable because it would provide the authority to the Administrator to obtain information directly from other agencies regardless of existing statutes prohibiting such transfer or of the pledge of confidentiality under which it was obtained. Law enforcement and independent regulatory agencies would be required, for example, to make information available which was obtained pursuant to active law enforcement investigations. Other bureaus and agencies who gather statistics on a voluntary basis but with a pledge of confidentiality to the respondent would also be required to make available individual respondent reports, thereby frustrating their ability to collect such data in the future.

There are two aspects of Section 11 which we understand are being considered for inclusion in the conference bill because they have no exact counterparts in the FEA legislation.

Subsection (d)(2) would require quarterly reports setting out a variety of types of energy information. We are very concerned that preparation of such reports would require misdirection of FEA's limited resources. Insofar as is practicable, FEA will publish data in report form, but we would prefer not to be required to prepare such a wide variety of reports, particularly on a quarterly basis.

We are also concerned that this provision might be construed to require publication of data that might be considered proprietary by the persons supplying the data to FEA; for example, inventory data broken down by refiners, and refinery yields by product. Such a provision would be inconsistent with the provisions of section 11(f) of the House bill, which provides confidential treatment for trade secrets and confidential commercial and proprietary data, and the similar provisions of the Emergency Petroleum Allocation Act.

The second provision under consideration, we understand, is one which would provide that the presently applicable restrictions of 18 U.S.C. 1905 against divulging trade secrets and other confidential trade information would not apply to information supplied to congressional committees at their request. We are somewhat concerned that such a provision would impair FEA's capacity to acquire proprietary data necessary for useful statistical information. Our data collection effort depends for its success on having the widest possible sampling. We therefore recommend against inclusion of such a provision. We will, of course, continue to provide Congressional committees with the widest possible range of information, as we have in the past.

Enforcement and penalty provisions.—The enforcement provisions of section 8 of the Senate-passed bill appear to contain some technical shortcoming which should be clarified to accomplish the intent of the Congress.

We recommend amending section 8(d)(4) to make it clear that the Administrator, FEA, and not just his delegates, can request the Attorney General to seek injunctive relief. We suggest the following language in lieu of the present section 8(d)(4): "The Administrator, Federal Energy Administration, or his delegate, may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin acts or practices constituting a violation of this section or any rule, regulation or order issued pursuant to this section, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with this section or any such rule, regulation or order issued pursuant to this section."

We also recommend an amendment to subsection 8(e) to make it clear that actions may be taken against offenders after June 30, 1975, for acts or omissions occurring before that date. As now drafted, the section could be construed to require formal administrative proceedings actually to have begun on June 30; this requirement could encourage violations of the Act in the weeks immediately prior to June 30.

We recommend adopting the following language on this subject:

"(e) The authority to promulgate and amend regulations and to issue any order under this section expires at midnight on June 30, 1975 but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight June 30, 1975."

Reference to additional legislation in conference report.—Let me reiterate my concern that the pending amendments to the Clean Air Act, while helpful if modified substantially, still do not represent long-term solutions to our coal use problems. They provide only limited, short-term assistance and do not correct several major, and I believe, unwarranted provisions or interpretations of the Clean Air Act.

We understand that the conferees are considering a statement in their report that H.R. 14368 deals with only a limited number of topics of extreme urgency and that the committees will be addressing themselves in the near future to other possible amendments, including amendments designed to deal with energy shortages and with insuring the best use of scarce low-sulfur fuels. We strongly support including such a commitment in the conference report.

There are several items included in both House and Senate versions of H.R. 14368 which are not a subject of the conference but which we believe should be discussed now and again during hearings held on additional amendments to the Clean Air Act.

Specifically, we are concerned with the provisions of section 119(b)(2)(B) that require that plants scheduled to convert must be committed to a compliance schedule that provides a date by which the source must enter into contracts for low sulfur coal or scrubbers. This provision is coupled with section 119(b)(2)(C) that requires plants granted suspensions to come into compliance with emission regulations in a state implementation plan that are in effect on the date of enactment of these amendments.

The requirement concerning contracts for low sulfur fuel or scrubbers would effectively preclude the use of intermittent control systems as an alternative method for achieving compliance. If the Administration's proposal to permit use of intermittent control systems, contained in our March 22 amendments to the Clean Air Act, is adopted, this section of H.R. 14368 would have to be amended to conform with it.

The related requirement concerning compliance with state implementation plan emission limitations in effect as of the date of enactment of H.R. 14368, similarly is inconsistent with the Administration's proposal to encourage revision of state implementation plans to avoid "overkill"—the situation in which state implementation plans require the burning of clean fuels in areas where air quality does not necessitate such fuels. If state implementation plans are in fact revised by the states in the interim to avoid overkill, plants should be required to come into compliance at the conclusion of their conversion orders with these revised state plans, not the plans in effect when H.R. 14368 is enacted.

We also strongly believe that the June 30, 1975 deadline for ordering conversions is unduly restrictive. The time-consuming procedure of air quality analysis and compliance plan revisions will be a deterrent to the number of orders FEO can effectively issue by the June 30, 1975, deadline. This deadline should be deleted.

We are interested in the conversion of power plants to coal from natural gas or petroleum products for the purpose of reducing U.S. dependence on foreign fuels. This strategy is designed to assist in achieving the Nation's long-run self-sufficiency goals. Only long-term conversions should be encouraged where secure long-term coal contracts can be established.

We believe there is a serious need to evaluate emission limitations that are designed to achieve ambient air quality cleaner than that required by the health-related standards. EPA's Clean Fuels Policy is essentially addressing this problem. However, this voluntary program has been less than completely successful. As long as overly stringent regulations remain on the books, utilities will not be able to enter long-term coal contracts because of the uncertainty of future emission limitation revisions.

Accordingly, the Federal Energy Office believes that further discussion is needed of several reasonable alternatives:

(1) Require the states to reconsider the emission regulations when a candidate for conversion is ordered to develop a compliance plan, or

(2) Extend the compliance deadline beyond 1979—to a time when resources are reasonably available to attain the welfare-related ambient standard.

Such further modifications to the Clean Air Act will prove necessary we believe to provide the incentive to the mine owner and operator to invest in new coal ventures. Ten to twenty years are needed to assure an economical mine—not just a few years.

I hope these comments have been useful and I look forward to continued cooperation with your Committee.

Sincerely,

JOHN C. SAWHILL,
Administrator.

OCTOBER 12, 1973.

Subject: Proposed Use of Supplementary Control Systems and Implementation of Secondary Standards.

Mr. ROBERT NELIGAN,
Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, N.C.

DEAR MR. NELIGAN: Thank you for the opportunity to comment on the proposed changes as published in the Federal Register, vol. 38, No. 178, Friday, September 14, 1973.

EPA's purposed limitation on the use of supplemental control systems show careful analysis. We agree that it is essential to require the source to reimburse the control agency for the cost of added monitoring and to take responsibility for air quality violations as well as the reliability of the supplemental controls as you have proposed.

We oppose the use of supplemental control systems to achieve ambient SO_2 standards without the requirement of at least 90% sulfur removal. We believe there should be no delay beyond the date presently established by EPA in reducing the total quantity of sulfur emitted to the air. See attached staff memoranda. We also urge the immediate application of curtailment to protect public health when primary standards are exceeded.

The evidence presented in the Swedish acid rain and the CHESS studies support the need to remove at least 90% of the sulfur from the emissions. It is important to provide early relief for those individuals who live downwind of a large point source of SO_2.

If supplementary control systems should be adopted we recommend these changes:

1. Add the following under 40 CFR, Part 51:

The use of supplemental controls shall be implemented at the earliest practical date to protect public health in places where primary standards for SO_2 are exceeded.

2. Ninety percent of the sulfur shall be removed from the emissions of smelter and power plants by the earliest practical date. The use of curtailment of emissions in excess of 90% shall be required if such curtailment is necessary to avoid exceeding SO_2 standards.

3. The installation of SO_2 control equipment for large point sources located in urban areas shall be given priority.

Eliminate the following under Supplementary Control Systems of 40 CFR, Part 51, column 2, page 25699:

Constant emission limitation techniques capable of achieving this degree of emission reduction are not available for every smelter. The alternatives in most cases will be either to close these facilities (or drastically curtail production) or apply supplementary control systems. Weak gas stream scrubbing and process changes may become available for application to many nonferrous smelters in the future.

The same stack-gas technology which EPA considers "adequately demonstrated" for electric generating plants can be applied to weak gas streams (e.g. from reverb furnaces) in smelters. And the top priority for this should be those power plants and smelters located in urban areas.

Thank you for your careful review of these comments and the enclosed memo.

Sincerely yours,

A. R. DAMMKOEHLER,
Air Pollution Control Officer.

October 12, 1973.

To: Air Pollution Control Officer.
From: Chief-Engineering and Air Pollution Engineer-Roberts.
Subject: Use of Supplementary Control Systems and Implementation of Secondary Standards Proposed by E.P.A.

The long-term use of supplementary control systems for large point sources of SO_2 such as curtailment or increased stack height to meet ground level ambient air concentrations are undesirable unless accompanied by at least 90% sulfur removal for the following reasons:

1. Supplementary Control System by itself will not control the total emissions of sulfur oxides even though ambient concentrations are below those set by regulation. The CHESS and Swedish acid rain studies, document the need to limit the total quantity of SO_2 which is emitted to the air at an early date.

2. The experience of this Agency with curtailment of the Tacoma Smelter is not satisfactory as is implied in the Federal Register. The attached chart showing the number of violations and public complaints indicate that there has been a large drop in complaints but there is need for added relief. The real life implementation of SO_2 curtailment by the Tacoma Smelter has produced some 200 public complaints in 1973 up to August 31. Some of the limitations proposed by E.P.A. will limit the number of violations and complaints and should be added the condition of the variance granted ASARCO. The use of curtailment with the Federal standards which are less stringent than those of our Agency would result in a higher number of SOU_2 insults to the public. We still receive large numbers of SO_2 complaints while ambient readings do not exceed the Federal standards.

3. ASARCO has reported that the use of curtailment by the Tacoma Smelter has caused a 30% loss in production. The early installation of effective controls would reduce the loss of power and copper that will occur if curtailment is used as the primary means of meeting SO_2 standards.

4. The technology to achieve 90% SO_2 control is available. The technology to control weak SO_2 streams coming from power plants is "adequately demonstrated" for purposes of Section III of the Clean Air Act. This safer technology can be applied to weak SO_2 streams coming from smelter roasters and reverberatory furnaces.

5. Curtailment programs are difficult to monitor and enforce.

A. ASARCO has recently successfully challenged this Agency's monitoring of * * * process. The State of Washington Pollution Control * * * recently ruled that violation cannot be issued unless the SO_2 ruling is 10% above the value specified in the regulation. On this basis six violations in 1973 were voided.

B. It would be possible to operate a curtailment system with very few violations yet have a large number of SO_2 insults that affect public health and cause the large number of complaints that we still receive. There is a strong tendency to reduce curtailment if the point source plume does not touch the air monitoring station. Requiring the source to pay the cost of additional monitoring is the only practical way to protect the public from SO_2 and sulfate insults.

C. It is impossible to model the SO_2 (and/or sulfate) insults that occur due to wind changes, the break-up of an inversion or the fugitive low level omissions. The only sure way to reduce these insults is to combine 90% control and curtailment.

6. Once supplementary controls are accepted as a means of meeting ambient air SO_2 standards there will be pressure to continue such controls indefinitely.

John W. Roberts.

The Library of Congress,
Congressional Research Service,
Washington, D.C., May 6, 1974.

To: Senate Subcommittee on Environmental Pollution. Attention: Mr. Karl Braithwaite.
From: Maria H. Grimes, Analyst, Environmental Policy Division.
Subject: Supplemental Control Strategies.

The following comments summarize information obtained on certain aspects of the proposed supplementary control strategies which you selected for further

analysis during our meeting on April 18. These included: state-of-the-art and reliability of SCS methods and technology; vulnerability of the system; costs; and enforceability.

To complement the information provided by EPA in its April, 1973 briefing paper, proposed regulations regarding use of intermittent control systems of September 14, 1973, and its hearings on the adequacy of SO_2 control technology in October, 1973, as well as the comments submitted to EPA by Natural Resources Defense Council (attached), I contacted the following persons:

Mr. John W. Frey, Air Quality Branch, TVA, Muscle Shoals, Alabama;

Mr. Robert Foster, Div. of Air Pollution Control, State of Tennessee;

Mr. Frank Dannkoehler, Air Pollution Control Officer, Puget Sound Air Pollution Control Agency, Seattle, Washington;

Mr. Franchot Buhler, National League of Cities, Washington, D.C.

The following observations result from these interviews:

ADEQUATE AND RELIABLE SCS TECHNOLOGY AND METHODOLOGY IS AVAILABLE

There seemed to be general agreement that adequate and reliable technology is now available and components from several vendors are usually selected to make up an SCS system. TVA estimates that a system for one of their plants would require 16–18 months to become fully operational, including field studies, design, state, and installation of equipment all of which can proceed simultaneously. The process requires minimal downtime and there is little malfunction.

Differences of opinion arise as to operational methods. EPA cites TVA's Paradise plant system as an example of the feasibility of the system. The discussion with Mr. Frey yielded the information, however, that the field instruments are not individually checked for calibration and performance, since the employee anticipated to this work has not yet become available. The instruments are monitored by remote control, the resulting data being processed by computer. One employee on an early day-time shift monitors the computer consoles and interprets the data for action as needed. (The need for onsite interpretation of meteorological data appears to vary with the individual location. Paradise requires only low-level interpretation, but the system installed for one section of the Widows Creek plant calls for considerable interpretative skills.)

At Paradise, no monitoring takes place by a trained meteorologist outside of his working hours which end in mid-afternoon. Yet, Mr. Dannkoehler stated that all SCS systems now available require regular servicing of all instruments (calibration, reading, evaluation) in the field, and that the system to be reliable, must be operated on a 24-hour basis. ASARCO's system and the instruments of the Puget Sound region are operated in this manner.

In a second, unsolicited conversation, Mr. Frey modified his previous statements. He did not change his original assertion that TVA SDEL program is being executed both on the basis of previous experiences and the use of new data developed in the course of operation, and that it is still in a state of flux, is not complete, and is still experimental in some of the stages. He did state, however, that TVA's goal is to have continuous meteorological surveillance in the field to interpret and make changes to improve computer accuracy. He apparently is not content to rely solely on the currently used indirect monitoring and remote readouts. Nevertheless, he reiterated that the Paradise operation demonstrates that ambient standards can be met and maintained with SCS, and that the system can be used as an "ongoing sustaining operation with reliable capabiilty." He emphasized that the full-scale program projected for TVA would involve a 24-hour, 3-shift, 7-day workweek operation, anticipated for June or September of this year at the Widows Creek plant. Even now, field instruments apparently are being maintained by TVA personnel not directly related to the SDEL program as part of the regular service schedule for all TVA instrumentation.

COSTS FOR RELIABLE AND ENFORCEABLE OPERATION OF AN SCS PROGRAM ARE CONSIDERABLE

EPA estimates that installation costs for an SCS system will average $300,000 and operational expenses $100,000 a year. A tall stack about 1,000 ft. high, to complement the system would cost $6 million, but require almost no upkeep. TVA's figures for its SDEL technique is about $100 million for installation and some $17 million annually for operation. Mr. Foster's estimate for a large power plant needing 10–12 monitoring sites is $2 million. These costs are about 10% of expenses which would have to be incurred for sulfur oxide scrubbers.

The real costs of using SCS are much higher. According to Mr. Dannkoehler and EPA, ASARCO sustained a 35% loss of production last year as a result of necessary curtailments of operations. While industries in some areas may avail themselves of State or local weather services and meteorological findings to compute and predict adverse conditions, additional funds may be needed for weather balloons and other measuring instruments where such services are not furnished by State or local weather bureaus.

Very significant additional costs, according to the State spokesmen and Mr. Buhler will have to be assumed by the tax payers to provide the necessary instrumentation and personnel to monitor and enforce SCS systems for the States' resources are already taxed to the limit and cannot assume additional surveillance responsibilities. Tennessee is considering a request for a Federal grant of about $100,000 a year for this purpose. Mr. Foster anticipates that, by following EPA criteria of eligibility, 5 or 6 sources would be allowed to use SCS and could be monitored for this amount. Puget Sound 6 or 7 persons are now detailed to monitor one ASARCO plant, using 5 of its 10 stations. About $100,000 a year is needed for this process which includes complex verification procedures to furnish solid proof of violations. It is complicated by obsolete instrumentation. Mr. Dannkoehler's estimate for State manpower needs to monitor all anticipated sources permitted to use SCS was around $400,000 a year. In addition, his agency would require a minimum of $70–80,000 to purchase new and more reliable equipment, since no Federal grants for this purpose have been received since 1968.

ENFORCEMENT OF AMBIENT STANDARDS IS DEFICIENT AND DIFFICULT—SCS SYSTEMS ARE TOO EASILY MANIPULATED TO AVOID DETECTION OF VIOLATIONS

EPA's criteria for allowing the use of SCS systems is that they be measurable and enforceable. TVA claims that the concerned States have free access to all plants and data, and that all necessary information is made available. Tennessee reserves the option for its personnel to enter a source without prior announcement, a requirement which antedates filing of the State implementation plan. The Puget Sound agency uses its own independent instrumentation to verify data submitted by ASARCO.

Confirmation of accuracy, and thus the enforcement of ambient standards are complicated, however.

Mr. Frey said that TVA is still negotiating with the States involved since the latter have not yet decided on a course of action to supervise the system and enforce the standards. Tennessee does give prior warning of a forthcoming inspection unless there is reason to believe that a source is deliberately violating the standard. In that event, a State monitoring instrument is moved into the vicinity of the plant's instrument to verify its data. Sources are required to demonstrate that they have both the expertise and the equipment to comply with regulations; however, expertise is acknowledged to be gained largely through on-the-job training, and Mr. Foster's opinion was that violations might be permitted on a sliding scale, with the system becoming effective over a period of time. Since his agency's primary stated objective is to protect public health, it is concerned with the results, not the internal mechanisms of a system. Sources are responsible for all equipment, including the necessary weather balloons.

Mr. Dannkoehler admits to considerable difficulties in proving violations. In order to disprove ASARCO's data obtained with up-to-date equipment, it must monitor the sources operations independently and, according to State regulations, furnish proof within a plus-minus 10% margin of error. The final strip chart—the final chart of calculations which is the result of preceding measurements and computations—is the required proof.

Puget Sound personnel has become experienced and expert at providing justifiable court data, but ASARCO employees also have become expert at avoiding or bypassing State monitoring stations. ASARCO also was to comply with a State-established inspection protocol which, however, it has yet to implement.

At the start, every citation of a violation was appealed, resulting in cumbersome, time-consuming procedures. The Appeals Court has since defined certain areas of controversy such as reliability of readings, dump cycle arguments (a smelter's purging period of 5–6 minutes at a time when instruments are not read) for which precedent-making judgments have been rendered. As a result, appeals have diminished, but violations have not decreased as a result of the increased number of uncontested fines paid. (See attached documents.)

In the case of multiple sources in a region, Mr. Dannkoehler felt that a separate set of instruments would have to be used for each source to prove a violation, for polluters could claim that the readings did not apply to them. Mr. Foster would use a model allocating a certain percentage of emissions to each source located in fairly close proximity to another.

SUPPLEMENTARY CONTROL STRATEGIES DO NOT ASSURE PROTECTION OF PUBLIC HEALTH

Until definitive proof is available that sulfates, acid rain and other residual pollutants resulting from tall stack emissions of SO_2 into the atmosphere are not harmful to public health, there appeared to be general agreement that SCS should be used solely as an interim measure in the context of the EPA proposal, that is, for existing installations only, and as temporary, immediate relief to the public while permanent controls are perfected. (Admittedly, the interim aspect may complicate enforcement and act as a disincentive to commit capital for installation and operation of SCS.) The Puget Sound region is on record as opposing the use of SCS without the requirement of at least 90 percent SO_2 removal. Emission controls of larger sources, as soon as their effectiveness has been demonstrated, are acknowledged to be the only permanent answer for the protection of public health. However, there seems to be general agreement that not only is control technology still deficient, but that delays in deliveries of equipment already contracted for due to shortages of materials and metals will make achievement of standards within the mandated time limits unfeasible.

Other issues, such as the legality of using SCS as an abatement strategy, are not covered in this memorandum. They are dealt with in the NRDC comments, a copy of which follows:

STATE AIR POLLUTION IMPLEMENTATION PLAN PROGRESS REPORT, JUNE 30 TO DECEMBER 31, 1973

(Prepared by Office of Air Quality Planning and Standards, Office of Air and Water Programs, U.S. Environmental Protection Agency, Research, Triangle Park, N.C., and Office of Enforcement and General Counsel, U.S. Environmental Protection Agency, Washington, D.C.)

AIR QUALITY AND EMISSION DATA

Air Quality Overview

Suspended particulates remain a problem in spite of encouraging evidence of downward trends. One-hundred-thirty-eight AQCR's reported at least one station still above a primary standard (24-hour or annual) in 1972. Thirty-four AQCR's have reported no annual 1972 particulate data. Primary 24-hour or annual sulfur dioxide standards were exceeded at one or more locations in only 19 of 162 AQCR's reporting 1972 data.

Data on oxidants and carbon monoxide are quite sparse, but if the limited results are indicative, substantial problems exist with these two pollutants. The primary exidant standard was exceeded in 21 of 38 AQCR's reporting at least one quarter's data. The primary carbon monoxide standards were exceeded in 42 of 48 AQCR's reporting in 1972.

Adequacy of Air Quality Reporting and Processing

At the conclusion of the fourth quarter of calendar year 1973, data for the second quarter of calendar year 1973 reaching the Storage and Retrieval of Aerometric Data (SAROAD) system represents less than 60 percent of the total stations reporting in calendar year 1972. Consequently, an attempt to characterize nationwide air quality status or trends using the incomplete 1973 data presently in hand would be premature and misleading. Four quarters of 1973 data are expected to be in hand for summarization in the next SIP progress reoprt.

Adequacy of Air Quality Monitoring Networks

The number of air sampling stations by pollutant-type reporting data as required in approved SIP's varies from 60 to 200 percent of requirements. However, when the required reporting stations are related to the SIP requirement the percentage by pollutant-type varies from 39 to 84 percent.

Emission Data Reporting and Processing

Emission data are continually changing due to additions and corrections (e.g., updated emission factors, discovery of new sources, new estimates of emissions from a source, installation of control equipment, shutdown and start up of sources). Consequently, trends due to control activities are characterized as inconclusive. However, the 1972 data based on the National Emission Data System (NEDS) show significantly higher carbon monoxide and lower particulate emission from industrial processes when compared to the 1971 data. NEDS shows more carbon monoxide for nearly every industrial category. It could be concluded either that NEDS has not adequately accounted for carbon monoxide controls or that the methodology used in 1971 overestimated the extent of control. Another possibility, of course, is that sources of carbon monoxide were inadvertently missed in earlier inventories.

Industrial process particulate emissions compare favorably from 1971 to 1972, except for the mineral products industry, which in 1972 had much lower emissions. As in the case of carbon monoxide emissions, the accountability of control measures for this category could cause this discrepancy.

PLAN REVISION MANAGEMENT SYSTEM

Overview

The Plan Revision Management System (PRMS) analysis has been expanded from the original 17 AQCR's to 67 AQCR's. In addition, the PRMS has been expanded from analysis in relationship to annual particulate matter and sulfur dioxide standards to analysis of all current national ambient air quality standards, except that for nitrogen dioxide.

The Office of Air Quality Planning and Standards provides each Regional Office with detailed copies of the individual PRMS site reviews for each monitoring site identified as having a "possible deficiency" within 60 days of the end of each semiannual reporting period. Data review actions have been initiated by the Regional Offices to determine causes of the identified deficiencies in the first 17 AQCR's within the PRMS.

Two important facts are germane in considering results of these actions. First, because the system considers the applicable State and Federal regulations, transportation control plans, and the Federal Motor Vehicle Control Program in the development of the projected air quality trend, an AQCR will not be "flagged" even though the air quality is considerably above the applicable air quality standards, so long as the observed air quality is following the downward trend predicted on the basis of enforcement of regulations and compliance schedules. Second, the PRMS analyzes only the air quality data currently contained in the SAROAD. Therefore, in a number of cases, because of the incomplete implementation of the quarterly reporting requirements for air quality data, there may be an 8- to 10-month time lag in the currentness of the data.

However, as more States begin to implement the reporting requirements, the system will be able to provide an up-to-date analysis of any specific AQCR and its progress toward attainment of the standards.

Results of Analysis

The current PRMS analysis has identified approximately the same percentage of possible deficiencies—an air sampling site where trends in air quality indicate that NAAQS will not be reached as of the specified date—in 10 of the original 17 AQCR's as were identified in the first analysis. Seven AQCR's did not have an increased number of monitoring sites available for review and had the same or an increased percentage of possible deficiencies.

A review of the other 50 AQCR's analyzed showed adequate progress being made toward attainment of air quality standards, with the exception of a few localized problems. The AQCR's that did not follow this general trend were principally divided into two groups: (1) those within limited data base and (2) those with increasing ambient concentrations. The AQCR's with a limited data base had fewer than the minimum number of sites required by the SIP and/or a minimum quantity of available data from each site.

For a particulate matter, 8 of the 67 AQCR's had a limited data base; for sulfur dioxide, 32 of the 67 AQCR's had a limited data base. Similarly, 14 of 25 AQCR's that were required to have carbon monoxide instruments had less than the minimum number of sites required and 18 of 36 AQCR's that were required to have oxidant instruments had less than the minimum number of sites required reporting sufficient data for analysis.

Possible deficiencies associated with particulate matter were noted in 51 of the 67 AQCR's analyzed. Some of these deficiencies appear to be local in nature since the remainder of the AQCR appears to be progressing as predicted.

Possible deficiencies were associated with carbon monoxide in 13 AQCR's and with oxidant in 8. However, 29 AQCR's have values that are currently above the national standards for carbon monoxide (although only 25 of the 67 AQCR's required CO monitors, an additional 4 AQCR's had data, thus, the 29), and 19 of the 36 AQCR required to have oxidant monitors have values above the standard. Again, it should be noted that almost 50 percent of the AQCR's that were required to have carbon monoxide and oxidant monitors had less than the minimum number of sites with sufficient data for analysis. Additionally, some AQCR's have a carbon monoxide instrument where no current SIP requirement exists and have recorded values in excess of the standard.

In general, the PRMS analysis indicates that in most AQCR's adequate progress appears to be made for most sites; however, no relaxation of any of the current ongoing programs should take place. The possible deficiencies should be reviewed to determine their cause and possible solution for that area of the AQCR where the deficiency was noted. The status of sulfur dioxide, carbon monoxide and oxidant will require additional data to really assess the situation and determine if possible deficiencies exist.

SUPPLEMENTARY CONTROL SYSTEMS

A major issue related to implementation plans involves the question of supplementary control systems (SCS) as an acceptable control strategy. SCS involve both the temporal variation of emission rate, based on expected meteorological conditions, to avoid high ground-level concentrations during periods of tall stacks to lower ground-level impact. Early in September 1973, EPA proposed regulations and solicited public comment on them.[1]

SCS are considered less desirable than constant emission limitations and, as proposed, will be allowed only for large, remote existing sources of sulfur dioxide and only where constant emission reduction systems are not available to the source. Generally this restricts their use to nonferrous smelters (after use of acid plant control systems) and rural coal-fired power plants that will not be able to install stack gas cleaning equipment nor find low-sulfur coal. The regulations also proposed many requirements for the design and operation of SCS.

* * * * * * *

Fourth, it should also be noted that many AQCR's have less than the minimum number of sites required in the SIP reporting sufficient data for which any analysis can be performed. This is especially true for sulfur dioxide, carbon monoxide, and oxidants. Thus, for many of the 67 AQCR's, the analysis for those pollutants may not be conclusive until at least the minimum number of required sites are reporting enough data for analysis and review. Consideration should be given to the number of sites for which the analysis was performed compared to the minimum number of sites required by the SIP before any conclusions are made concerning the progress an AQCR is making. Many AQCR's that at this time appear to be making adequate progress based on less than the minimum number of monitors required may have severe SIP deficiencies when the data from all the sites are available in sufficient quantity for review.

A comparison of the initial analysis for the 17 AQCR's to the current analysis indicates that in general, States are submitting more aerometric data, thus providing a larger air quality data base for review.

In some cases, the increased data base alllowed for the identification of some additional possible deficiencies that were not evident in the initial analysis.

The results from the current analysis of 67 AQCR's indicated four principal types of problems: (1) limited data base, (2) localized problem, (3) general problem, and (4) increasing pollutant concentrations.

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[1] Federal Register, vol. 38, No. 178, Sept. 30, 1973.

The AQCR's with a limited data base resulted from having less than the minimum number of sites required by the SIP. This was not a major problem for particulate matter as only 8 of the 67 AQCR's had less than the amount number or sites currently reporting sufficient data for analysis. However, this was not the case for sulfur dioxide; 32 of the 67 AQCR's had less than the minimum number of monitoring sites reporting sufficient data for analysis. Similarly, 14 of the 25 AQCR's that were required to have carbon monoxide instruments had less than the minimum number of sites required, and 18 of the 36 AQCR's that were required to have oxidant instruments had less than the minimum number of sites required reporting sufficient data for analysis.

Possible deficiencies associated with total suspended particulates were noted in 51 of the 67 AQCR's analyzed. Some of these deficiencies appear to be local in nature since the remainder of the AQCR appears to be progressing as predicted. In addition, 65 of the 67 AQCR's have particulate concentrations above the national ambient air quality standard.

Only 5 of the 67 AQCR's had possible deficiencies relative to sulfur dioxide, and 9 AQCR's had values above the standards. As mentioned previously, however, almost 50 percent of the AQCR's analyzed had less than the minimum number of sites required, and any general conclusions on the status of sulfur dioxide would not be completely accurate at this time.

Possible carbon monoxide deficiencies were noted in 13 AQCR's and oxidant deficiencies in 8. However, 29 of the AQCR's have values that are currently above the national standards for carbon monozide. Nineteen (19) of the 36 AQCR's required to have oxidant instruments were above the standard. Again, it should be noted that almost 50 percent of the AQCR's required to have carbon monoxide and oxidant monitors had less than the minimum number of sites with sufficient data for analysis. Additionally, four AQCR's that have a carbon monoxide instrument where no current SIP requirement exists have recorded values in excess of the standard.[2]

Two AQCR's have been noted as having possible deficiencies throughout the AQCR, and further study should be initiated to determine the real extent of the problem.

To date, 8 AQCR's have reported pollutant concentrations that have increased over the past years. This problem appears to be local in nature as only one or two sites, in these AQCR's have shown increases. This problem relates primarily to particulate concentrations; however, in a few areas, sulfur dioxide levels have also increased slightly.

In general, the PRMS analysis indicates that in most AQCR's adequate progress appears to be being made for most sites; however, no relaxation of any of the current ongoing programs should take place. The possible deficiencies should be reviewed to determine their cause and possible solution for that area of the AQCR where the deficiency was noted. The status of sulfur dioxide, carbon monoxide, and oxidants will require additional data to really assess the situation and determine if possible deficiencies exist. However, for those areas where a deficiency was noted, some work should begin to investigate the extent of the problem.

SECTION 6—AIR QUALITY MONITORING AND DATA REPORTING

Ambient Air Quality

State air pollution control agencies must satisfy two basic requirements with respect to ambient air quality monitoring: (1) establish a network of measurement stations for each designated pollutant (total suspended particulates, sulfur dioxide, carbon monoxide, and oxidants) according to prescribed guidelines, adequate in number and comprehensive in distribution, to yield a representative picture of pollutant means and extremes, and (2) submit the data from these monitoring networks to EPA quarterly as evidence of meeting air quality standards or of making proper progress toward a specified compliance date.

Table 6–1 lists, by State, the level of monitoring activity for calendar year 1972 being reported to EPA's National Aerometric Data Bank (NADB) as of September 1973. Under each pollutant, the initial columns give the numbers of individual stations initially required in the August 14, 1971, Federal Register[3] and the numbers of stations for which data collected in 1972 have been reported.

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[2] Although only 25 of the 67 AQCR's required CO monitors, an additional 4 AQCR's had data: thus, the 29.

[3] Federal Register, vol. 36, No. 156, Aug. 14, 1971.

TABLE 6-1.—STATUS OF CALENDAR YEAR 1972 MONITORING ACTIVITY AS REPORTED TO NADB BY STATES, SEPTEMBER 1973

EPA Region State	AQCR's within State	Total suspended particulates						Sulfur dioxide						Carbon monoxide						Oxidants					
		Total required			AQCR's reporting			Total required			AQCR's reporting			Total required			AQCR's reporting			Total required			AQCR's reporting		
		Minimum required	Total reporting	Required not reporting	<½ minimum required	½ to minimum required	>Minimum required	Minimum required	Total reporting	Required not reporting	<½ minimum required	½ to minimum required	>Minimum required	Minimum required	Total reporting	Required not reporting	<½ minimum required	½ to minimum required	<Minimum required	Minimum required	Total reporting	Required not reporting	>½ minimum required	½ to minimum required	<Minimum required
Region I:																									
Connecticut	4	16	25	0	0	0	4	14	4	10	2	1	1	4	0	4	2	0	2	4	0	4	2	0	2
Maine	5	13	6	7	4	1	0	13	9	7	4	0	1	0	0	0	0	0	5	0	0	0	0	0	5
Massachusetts	3	39	52	6	1	0	5	34	48	0	0	0	6	7	2	5	2	0	4	7	0	7	2	0	4
New Hampshire	3	8	25	0	0	0	3	9	4	5	2	0	1	0	0	0	0	0	3	0	0	0	0	0	3
Rhode Island	1	7	23	0	0	0	1	7	20	0	0	0	1	0	2	0	0	0	1	0	0	0	0	0	1
Vermont	2	4	2	2	1	0	1	5	0	5	2	0	0	0	0	0	0	0	2	0	0	0	0	0	2
Region II:																									
New Jersey	4	19	78	0	0	0	4	20	28	2	0	1	3	8	20	2	0	1	3	7	3	4	1	1	2
New York	8	72	228	0	0	0	8	58	49	29	3	1	4	13	10	8	1	1	6	19	7	13	4	0	4
Puerto Rico	1	3	5	2	0	0	1	4	4	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	1
Virgin Islands	1	3	4	0	0	0	1	4	2	2	0	1	0	0	0	0	0	0	1	0	0	0	0	0	1
Region III:																									
Delaware	2	3	16	0	0	0	2	3	10	0	0	0	2	1	0	1	1	0	1	1	0	1	1	0	1
District of Columbia	1	4	2	2	0	1	0	4	4	0	0	0	1	1	2	0	0	0	1	1	1	0	0	0	1
Maryland	6	31	85	0	0	0	6	29	50	0	0	0	6	6	1	5	2	0	4	6	0	6	2	0	4
Pennsylvania	6	68	105	2	0	1	5	42	14	28	4	2	0	11	1	10	2	0	4	11	1	10	2	0	4
Virginia	7	47	116	3	0	1	6	16	44	4	1	0	6	2	3	1	0	1	6	7	3	4	2	0	5
West Virginia	10	24	36	4	3	1	6	12	14	8	6	0	4	0	1	0	0	0	10	0	0	0	0	0	10
Region IV:																									
Alabama	7	34	60	1	0	1	6	15	10	8	4	1	2	3	0	1	1	0	6	4	1	3	1	0	6
Florida	6	32	39	6	2	9	4	24	36	2	2	9	4	0	3	0	0	0	6	4	2	2	1	1	4
Georgia	9	43	29	13	1	7	1	6	14	23	3	3	3	0	1	0	0	0	9	1	0	1	1	0	8
Kentucky	9	30	88	2	1	0	8	18	78	0	0	0	9	0	4	0	0	0	9	3	2	1	1	0	8
Mississippi	4	11	1	9	3	0	1	9	2	7	3	0	1	0	0	0	0	0	4	2	0	2	1	0	3
North Carolina	8	54	178	0	0	0	8	11	135	0	0	0	8	0	0	0	0	0	8	2	1	1	1	0	7
South Carolina	10	35	72	10	0	0	10	19	36	3	0	1	9	0	0	0	0	0	10	1	0	1	1	0	9
Tennessee	6	39	95	0	0	0	6	17	34	3	2	0	4	0	1	0	0	0	6	5	2	3	1	1	4

Region V:																									
Illinois	11	54	54	26	8	2	1	52	38	26	7	0	4	10	0	10	2	0	9	10	1	9	2	0	9
Indiana	10	42	117	1	0	2	8	37	61	17	4	0	6	4	0	4	2	0	8	4	1	3	2	0	8
Michigan	6	29	108	0	0	0	6	27	42	1	0	1	5	0	0	0	0	0	6	0	0	0	0	0	6
Minnesota	7	25	57	2	1	1	5	23	18	6	3	2	2	4	2	2	0	1	6	0	1	0	0	0	7
Ohio	14	78	123	27	9	1	4	60	72	28	8	1	5	0	4	0	0	0	14	16	7	8	3	1	10
Wisconsin	8	24	7	17	6	1	1	9	3	6	4	0	4	0	0	0	0	0	8	4	0	4	0	0	8
Region VI:																									
Arkansas	7	10	28	0	0	0	7	4	2	3	3	0	4	0	0	0	0	0	7	0	0	0	0	0	7
Louisiana	3	5	11	0	0	0	3	15	17	0	0	0	3	0	0	0	0	0	3	5	4	1	0	1	2
New Mexico	8	16	26	2	2	0	6	9	5	5	4	1	3	1	1	1	1	0	7	3	1	2	1	1	6
Oklahoma	8	24	90	0	0	0	8	6	25	0	0	0	8	0	2	0	0	0	8	4	2	2	0	2	6
Texas	12	52	160	0	0	0	12	49	13	37	9	0	3	1	0	1	1	0	11	19	0	19	7	0	5
Region VII:																									
Iowa	12	32	26	9	3	1	8	13	2	11	10	0	2	0	0	0	0	0	2	2	0	2	1	0	11
Kansas	7	35	57	2	0	1	6	6	31	0	0	0	7	1	3	0	0	0	7	3	2	1	0	1	6
Missouri	5	30	46	6	1	0	4	15	4	11	3	0	2	6	1	5	2	0	3	6	1	5	2	0	3
Nebraska	4	11	36	0	0	0	4	5	2	4	3	0	1	0	1	0	0	0	4	0	1	0	0	0	4
Region VIII:																									
Colorado	8	28	68	0	0	0	8	8	3	7	7	0	1	3	1	2	1	0	7	3	2	1	0	1	7
Montana	5	13	2	11	4	0	1	14	1	13	5	0	0	0	0	0	0	0	5	0	0	0	0	0	5
North Dakota	2	5	16	0	0	0	2	2	0	2	2	0	0	0	0	0	0	0	2	0	0	0	0	0	2
South Dakota	4	6	2	4	3	0	1	3	1	2	2	0	2	0	0	0	0	0	4	0	0	0	0	0	4
Utah	3	11	8	2	2	1	0	9	1	8	3	0	0	2	4	0	0	0	3	2	0	2	1	0	2
Wyoming	3	7	3	4	2	0	1	3	1	2	2	0	1	0	0	0	0	0	3	3	0	0	0	0	3
Region IX:																									
American Samoa	1	1	0	1	1	0	0	1	0	1	1	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Arizona	4	17	32	0	0	0	4	16	15	4	0	1	3	3	1	2	1	0	3	3	2	1	0	1	3
California	11	64	18	47	10	0	1	17	15	6	6	0	5	29	42	2	1	0	10	29	60	1	1	0	10
Guam	1	1	3	0	0	0	1	4	2	2	0	1	0	0	0	0	0	0	1	0	0	0	0	0	1
Hawaii	1	3	14	0	0	0	1	1	12	0	0	0	1	0	1	0	0	0	1	0	1	0	0	0	1
Nevada	3	13	41	0	0	0	3	8	3	5	2	1	0	2	0	2	1	0	2	2	1	2	1	0	2
Region X:																									
Alaska	2	11	17	1	1	0	3	7	7	0	4	0	0	1	1	0	0	0	4	0	0	0	0	0	4
Idaho	4	15	25	2	0	1	3	7	0	7	0	4	0	0	0	0	0	0	4	0	0	0	0	0	4
Oregon	5	20	48	0	0	0	5	8	2	6	4	1	0	3	2	1	0	1	4	3	2	1	0	1	4
Washington	6	31	54	0	0	0	6	14	12	2	2	0	4	7	8	0	0	0	6	5	4	1	1	0	5
Total	1,377	2,667	233	69	33	220	861	1,049	363	136	33	153	133	125	69	23	5	275	208	122	128	46	12	255

The remaining columns in table 6–1 categorize the number of Air Quality Control Regions (AQCR's) within each State that are (1) reporting less than half the required monitoring, (2) reporting from half up to the required monitoring, and (3) reporting more than the minimum required monitoring. (Requirements for interstate AQCRs are apportioned to the constituent States according to population.)

Note that some States in table 6–1 are reporting as many stations as required, and some are reporting more; but these stations are not always distributed among the AQCR's in accord with minimum requirements for each AQCR. Consequently, even in these States, one or more AQCR's may not yet satisfy minimum monitoring requirements. Further, table 6–1 identifies how many of the minimum required stations are actually being reported in each State. No attempt has yet been made to assess the aspect of how representative these monitoring locations are.

Tables 6–2 to 6–5 summarize the status of air quality in the nation's 247 AQCR's as portrayed by the data reported to NADB for calendar year 1972. For each pollutant, the number of AQCR's in each priority classification is shown, plus the number of AQCRs reporting (1) at least one station-quarter's data and (2) at least one valid station-year of data for particulates and sulfur dioxide, for which annual standards pertain. The final column in each of these tables reports the number of AQCR's wherein one or more reporting stations exceeded a primary standard. The results in these four tables differ from those presented in the previous SIP progress report [4] as a consequence of additional 1972 data and corrections received in the interim. The previously reported counts are shown in parenthese in the tables.

In brief, suspended particulates remain a problem in spite of encouraging evidence of downward trends. One-hundred-thirty-eight AQCR's have reported at least one station still above a primary standard (24-hour and or annual) in 1972. Thirty-four AQCR's had reported no 1972 particulate data at that point. Primary 24-hour and/or annual sulfur dioxide standards were exceeded in only 19 of 162 AQCR's reporting in 1972.

Data for oxidants and carbon monoxide are quite sparse, but if these limited results are indicative, substantial problems exist with respect to these two pollutants. The primary oxidant standard was exceeded in 21 of 38 AQCR's reporting at least one quarter's data. The primary carbon monoxide standards were exceeded in 42 of 48 AQCR's reporting in 1972. More detailed information on AQCR status and individual station results is given in Publication No. EPA–450 1–73–004.[5]

The presence of individual values or annual means over a standard clearly identifies problem AQCR's. The absence of such values or means in the data reported from other AQCR's does not necessarily warrant the conclusion that the standards are being met in those AQCR's until their monitoring networks have been thoroughly appraised for adequacy in number and placement of monitoring sites. Many regions do not have comprehensive networks operating; others are only just beginning to report scattered results from the initial stages of network implementation. Until assessments can be made of network adequacy (not necessarily to be equated with the initially specified minimum requirements listed in Table 6–1) a technical distinction exists in describing an AQCR reporting no values above standards. For the present, it can only be stated that such an AQCR "experiences no violation." The goal based on data from an adequate network, will be to designate such an AQCR as "in compliance" with national ambient air quality standards.

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[4] Monitoring and Air Quality Trends Report, 1972. U.S. Environmental Protection Agency, Research Triangle Park, N.C. Publication No. EPA–450/1–73–004.

[5] State Air Pollution Implementation Plan Progress Report, January 1 to June 30, 1973. U.S. Environmental Protection Agency, Research Triangle Park, N.C. EPA–450/2–73–005. September 1973.

TABLE 6-2.—SUSPENDED PARTICULATE MATTER, STATUS OF AIR QUALITY, 1972

[Based on data reported by States as of Oct. 6, 1973. Values reported in EPA 450/2-73-005 are given in parentheses]

Priority classification	Number of AQCR's	AQCR's reporting— At least 1 station-quarter	AQCR's reporting— At least 1 station-year	AQCR's exceeding any primary standard
I or Ia	120	118 (116)	110 (106)	102 (99)
II	70	63 (61)	53 (47)	22 (26)
III	57	37 (36)	28 (26)	14 (14)
Total	247	218 (213)	191 (179)	138 (139)

TABLE 6-3.—SULFUR DIOXIDE, STATUS OF AIR QUALITY, 1972

[Based on data reported by States as of Oct. 6, 1973. Values reported in EPA 450/2-73-005 are given in parentheses]

Priority classification	Number of AQCR's	AQCR's reporting— At least 1 station-quarter	AQCR's reporting— At least 1 station-year	AQCR's exceeding any primary standard
I or Ia	60	52 (51)	41 (40)	[1] 13 (17)
II	41	31 (30)	27 (25)	[1] 4 (8)
III	146	79 (73)	55 (50)	2 (2)
Total	247	162 (154)	123 (115)	19 (27)

[1] These original totals were in error.

TABLE 6-4.—OXIDANTS, STATUS OF AIR QUALITY, 1972 [1]

Priority classification	Number of AQCR's	AQCR's reporting at least 1 station-quarter	AQCR's exceeding primary standard
I	[2] 55 (554)	31 (25)	25 (18)
III	[2] 192 (193)	7 (53)	3 (3)
Total	247 (247)	38 (28)	28 (21)

[1] Based on data reported by States as of Oct. 6, 1973. Values reported in EPA 450/2-73-005 are given in parentheses.
[2] Providence AQCR has been reclassified priority I for oxidants.

TABLE 6-5.—CARBON MONOXIDE, STATUS OF AIR QUALITY, 1972 [1]

Priority classification	Number of AQCR's	AQCR's reporting at least 1 station-quarter	AQCR's exceeding primary standard
I	30 (39)	22 (13)	21 (13)
III	217 (218)	26 (21)	21 (20)
Total	247 (247)	48 (34)	42 (33)

[1] Based on data reported by States as of Oct. 6, 1973. Values reported in EPA 450/2-73-005 are given in parentheses.

In some instances, the lack of stations in an AQCR may be only an apparent deficiency. Stations may exist for which the data are not yet being expeditiously relayed or correctly identified for acceptance in the National Aeromatric Data Bank. Table 6-6 provides clear evidence that the anticipated schedule of data submittal from local or State agencies through the EPA Regional Offices to NADB, Durham, N.C., has not yet been realized. According to this schedule, data should reach NADB 75 days after the close of a quarter; summaries of these data

are then provided 120 days after the close of a quarter. However, at the conclusion of the fourth quarter (CY IV), data for the second quarter of CY 1973 (CY II) reaching NADB represents less than 60 percent of the total stations reporting in CY 1972. Consequently, an attempt to characterize nationwide air quality status or trends using the incomplete 1973 data presently in hand would be premature and misleading at this time. Sufficient 1973 data are expected to be in hand for summarization in the next SIP progress report.

The number of monitors reporting air quality data to NADB by type varies from 60 to 200 percent of nationwide requirements, although the percent of required stations reporting by type is considerably lower, from 39 to 68 percent (see table 6–7).

TABLE 6–6.—NATIONAL SUMMARY OF STATE MONITORING AS REPORTED TO NADB AS OF JAN. 11, 1974

Pollutant	1971	1972	1973		1974 proposed	Legal requirement
			1st quarter	2d quarter		
TSP	1,313	2,683	1,914	1,449	3,511	1,377
SO_2[1]	409	1,064	694	766	2,129	861
O_x	50	113	31	52	458	208
CO	58	128	42	75	457	133
Total	1,830	3,988	2,681	2,342	6,555	2,579

[1] Includes both continuous samplers and West-Gaeke bubbler.

TABLE 6–7.—AIR QUALITY MONITORING SITES, ACTUAL VERSUS REQUIRED

Pollutant	Legal requirement	Total reporting[1]	Ratio reporting/ required	Required not reporting	Required reporting	Ratio required reporting/ required
TSP	1,377	2,667	1.94	233	1,144	0.84
SO_2	861	1,049	1.22	363	498	.58
CO	133	125	.94	69	64	.48
O_x	208	122	.59	128	80	.39

[1] Not all of total reporting sites necessarily satisfy legal requirement.

The wide variance between the percent of total reporting stations and those stations reporting from required sites suggests a need for EPA and State effort to improve the distribution of air quality monitors as well as to increase the number of some types. It is anticipated that this will change as EPA revises guidelines for minimum monitoring networks in the future.

SOURCE EMISSIONS

The 1972 emission estimates shown in Table 6–8 are based on data from the National Emissions Data System (NEDS) data bank. Until 1972, the emission estimates were obtained by applying overall emission factors and industry average control efficiencies to nationwide production or consumption totals to calculate emissions. Emissions in NEDS are calculated for each point and area source and summed to arrive at the totals shown in table 6–8.

TABLE 6–8.—NATIONWIDE EMISSIONS, 1972 (10^6 TONS/YR)[1]

Source	CO	TSP	SO_x	HC	NO_x
Transportation	76.4	0.8	0.6	16.0	8.6
Fuel combustion in stationary sources	1.2	7.5	24.4	.5	12.3
Industrial processes	17.6	8.6	6.6	6.5	.7
Solid waste	5.0	.9	.1	1.6	.2
Miscellaneous	.8	.2	0	1.8	
Total	101.0	18.0	31.7	26.4	21.8

[1] Based on data from the National Emissions Data Bank.

The NEDS data bank lacks adequate data for estimation of emissions from all sources. The most notable deficiencies in NEDS, with respect to table 6–8, are that (1) all New York State point sources are missing, and (2) emission estimates are not made for forest fires, coal refuse burning, and structural fires. According to data from the New York SIP, significant additional emissions for point source fuel combustion and industrial processes could be expected. Perhaps an additional one million tons of sulfur oxides and smaller amounts of other pollutants may be added to the fuel combustion by stationary sources totals to account for New York point sources. Industrial process emissions of particulate in New York may be 200,000 tons, but less than 100,000 tons of the other pollutants. Emissions from forest fires, coal refuse burning, and structural fires should be added to the miscellaneous category to make these totals comparable to the data for previous years. Due to lack of source data on a detailed, county basis for these types of sources NEDS does not presently account for these emissions.

The 1972 data based on NEDS show significantly higher carbon monoxide and much lower particulate emissions from industrial processes when compared to the 1971 data based on the old methodology. NEDS shows more carbon monoxide for 1972 for nearly every industrial category. It is concluded either that NEDS has not adequately accounted for carbon monoxide controls or that the old methodology overestimated the extent of control. Another possibility is that relatively large emitters were not accounted for in the old methodology. The apparent discrepancy is probably due to a combination of these factors. On the other hand, recent industrial process particulate emissions from NEDS agree quite well with old methodology estimates except for the mineral products industry and food and agricultural industry categories. Recent NEDS estimates show much lower emissions for both categories (5.2 versus 2.6 millions tons for food and agricultural industries). Again, the discrepancy could be due to difficulties in correctly determining control efficiencies. A more likely explanation in this case is that NEDS does not adequately account for emissions from all soures in these categories. It is known, for example, that NEDS does not contain adequate source data to estimate emissions for all grain elevators and feed mills.

Comments on Proposed Rules Regarding Use of Supplementary Control Systems

The proposed "supplementary control system" ("SCS") regulations, 38 Fed. Reg. 25697 (Sept. 14, 1973), should not be promulgated. In our view, they violate the Clean Air Amendments and cannot be supported on policy grounds. EPA was correct about a year ago when it stated its opposition to dispersion techniques:[6] "dilution" is not, as the leaden professional jest once had it, "the solution to pollution."

At the outset, we must clarify what these regulations actually provide, for they are written in a way that disguises their true consequences. The proposed regulations provide for indefinite use of SCS and tall stacks as a means of attaining National Air Quality Standards in the vicinity of "isolated sources" of pollution. So long as a state agency concludes that continuous emission control devices capable of meeting the emission limitations necessary to attain Standards are not "available," and the source agrees to undertake a program of research on continuous emission controls, the source may continue using SCS. They are not limited to use as "interim measures of control," within the meaning of the statute, since they are not limited to sources within areas that have received extensions of the deadline for attaining National Standards as provided in § 110(e) of the Act, and since the proposed regulation puts no limit on the time during which they may be used.

This point should be made clear. In our views, SCS may be a legally acceptable interim measure under § 110 (e) and (f) of the Act. But despite the rhetoric of EPA's preamble to the proposed regulations, they do not confine SCS to use as an interim measure in any ordinary sense of the word. In the statute, the word "interim" is used in connection with short periods of time, such as one or two years, with specified beginning and end. A source allowed to use an "interim" measure must be on a binding compliance schedule constructed to insure that emission limitations are met at the close of the interim period.

But EPA's proposed SCS regulations contain none of these earmarks of an interim measure. Instead of requiring a definite date in the near future for

[6] 37 Federal Register 15095 (July 27, 1972).

moving from SCS to continuous controls, they merely require "formal review and reexamination of the permit at intervals of 5 years or less." Proposed App. P, § 3.2(g). Rather than requiring a specific compliance schedule for moving to continuous controls, or even a binding schedule for a program of research on such a control system, they timidly require a mere "description of the firm's research and demonstration programs, or its participation in such programs, which will accelerate the development of constant emission reduction technology [including a description of] schedules and resources to be committed and an anticipated date when adequate emission reduction technology can be applied." Proposed App. P, § 3.2(b)(5). These "requirements" amount to little more than a generalized and totally unenforceable statement from the source that he intends to proceed in good faith. Since the statute requires compliance, the good faith of a source is irrelevant, though it is hard to imagine how the statutory requirements could be attained without it. On the other hand, EPA has already accumulated ample hard evidence, based on performance rather than promises, to justify a conclusion that good faith attempts to develop and install continuous control equipment cannot be anticipated from the utility industry.[7]

Second, though they are drafted to disguise the fact, the proposed regulations are actually a vehicle for legitimizing the use of tall stacks as well as SCS. In fact, they are drafted in a way which allows a source to escape ever having to curtail production (or pollution) so long as he presented a paper program for intermittent curtailment and built a tall enough stack. Proposed 40 C.F.R. § 51.13 (h) places only one limitation on the use of tall stacks to attain Air Quality Standards—that it be "accomplished as part of an approved supplementary control system." The possibility that an SCS will be merely a paper justification for building a tall stack is hardly remote. Process curtailment is expensive, and inconvenient. In the case of power plants, the need to continue operations at full capacity is likely to occur at precisely the times when curtailment would be required if SCS were relied upon without tall stacks—during periods of air stagnation during the summer when massive use of air conditioning produces peak loads on electrical systems. In other industries, it is likely that the increased production that could be provided by being able to operate at full capacity at all times would more than pay the costs of erecting a stack high enough to avoid ever having to invoke SCS process curtailment. For these reasons, the SCS proposal can in no sense be considered a proposal for "emission limitations," as required by the Act. It is, pure and simple, a proposal to supply the mantle of legitimacy to the use of dispersion as a means to attain National Air Quality Standards, and must stand or fall, legally, on the question of whether such a method is allowed by the statute.

I. DISPERSION IS PROHIBITED BY THE ACT AS A MEANS OF ATTAINING NATIONAL STANDARDS

The issue of whether dispersion techniques are allowed by the Clean Air Amendments is now in the Courts.[8] Since NRDC is one of the litigants in this case, it is unnecessary to delineate in detail the statutory basis for our belief that such methods are explicitly prohibited as control strategies by the Act. Instead, we incorporate by reference pages 23–30 in petitioners' brief, and pages 15–19 in petitioners' reply brief in that case, which are attached to these comments as Appendix A. Suffice it to say, however, that NRDC regards that case as placing in issue the principle of whether dispersion is a permissible means of control under the Act, and will regard a holding in our favor there as applying to the whole of the regulations under consideration here.

We also believe that the present SCS proposal does violence to the statutory scheme in another way. In its preamble to the proposed SCS regulations, EPA asserts that SCS is to be considered as a control technique wherever adequate continuous emission control methods are "not available" and the "alternatives will be either to close these facilities (or drastically curtail production), or apply supplementary control systems." 38 Fed. Reg. at 25699. In such situations,

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[7] In its flue gas desulfurization hearings, the EPA hearing panel concluded that the installation of such technology had been impeded by the stubborn resistence of the utility industry, some segments of which admitted spending more money to fight the requirements for installing such technology than to make it workable and acceptable on their terms. U.S. EPA, Report of Hearing Panel, National Public Hearings on Power Plant Compliance with Sulfur Oxide Air Pollution Regulations (January 1974), at 27–28.

[8] *NRDC, et al.*, v. *EPA*, No. 72–2402 (5th Cir.). This case was argued before the Court of Appeals on May 8, 1973.

the preamble states the Administrator's judgment that "it does not appear to be in the public interest to require shutdown or permanent curtailment of production for existing sources which could temporarily use supplementary control system." *Id.*

This statement does not provide a legally adequate basis for turning to a method of dubious efficacy and legality. The Act does not set itself against the closing of plants which endanger the public health and welfare. Indeed the drafters explicitly recognized the possibility that methods of production that were incompatible with the protection of the public must be curtailed or eliminated. "(E) existing sources of pollution either should meet the standard of the law or be closed down." Sen. Rep. No. 91–1196 (1970), at 3.

The Act also provides a means for dealing with situations when a claim is made that meeting the requirements of the law would result in shutdown, designed to maximize the incentive of the source to find ways of complying with the emission standards contained in the State Plan. First, where emission controls are not available soon enough to insure attainment of National Primary Standards within the three years outer limit required by the Act, a State may receive up to two years extension of the deadline for meeting the Standard. If an individual source finds that he is still unable to install equipment or make other changes to bring him into compliance, he may ask his State Governor to request an additional year's postponement of the application of the emission limitations to him. Such a request must be tested in a judicialized hearing, where there is opportunity of cross-examination and full testing of the source's claim. If, among other things, the Administrator finds that the continued operation of the source is "essential to the national security or to the public health or welfare," he may grant the postponement; if not, he must order shutdown. We find nothing in the statute which precludes additional postponements, so long as they are tested fully through the statutory procedure. But the benefit of this procedure is that it places a heavy burden on the source owner to justify, on a yearly basis, continued failure to meet emission limitations. EPA's proposal, which substitutes an informal administrative judgment, made long before the last deadline for meeting State emission standards and renewed only infrequently, removes this burden and maximizes the incentive to avoid discovering ways of meeting the emission limitations.[9]

Finally, the proposal violates the requirement of the Act that any State Plan, or revision, "provide (i) necessary assurances that the State will have adequate personnel [and] funding. . . ." § 110(a)(2)(F), 42 U.S.C. § 1857c–5(a)(2)(F). An SCS will impose large financial, administrative, and technical burdens on the State agencies. The Puget Sound Air Pollution Control Authority, one of the few State agencies with experience in overseeing such systems, estimates that it presently spends $160,000 to $200,000 per year to monitor the SCS now operating at ASARCO's Tacoma, Washington, smelter.[10] EPA's own estimates, completed prior to the formulation of the proposed regulations, fall in the same range.[11] Yet nothing in the proposed regulation requires a showing by a State agency inclined to allow the use of SCS on a facility of whether such funds are available over and above funds already made available for the remainder of the State program. If such additional funds are not available, they will obviously rob from the existing State program. In many State agency budgets, $200,000 represents a sizable portion of the entire air pollution control effort.[12]

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[9] The strong financial incentive for sources to drag their feet in discovering that continuous controls are available is apparent. For example, EPA now estimates the cost of installing flue gas desulfurization equipment at $50 to $65 per kilowatt or about $30–40 million at an average sized coal fired power plant. U.S. EPA, Report of Hearing Panel, "National Public Hearings on Power Plant Compliance With Sulfur Oxide Air Pollution Regulations" (January 1974), at 55. By contrast, SCS can be installed for about $300,000, and operated for approximately $100,000 a year. EPA briefing paper on SCS, April 1973, p. 14. A very tall smokestack, perhaps 1,000 feet high, might come to about $6 million in capital costs, with virtually no upkeep.

[10] The figure includes costs for sensors, computer time, and six to eight full time employees. Telephone conversation with Frank Dannkoehler, Air Pollution Control Officer, PSAPCA, Nov. 8, 1973.

[11] Briefing paper prepared for EPA conference on SCS (ICS), April 1973, Tab. 6, at p. 3. Attached as Appendix B.

[12] See NRDC, Action for Clean Air (1971), at 47, for figures on State agency budgets at that time. It is also worth noting that in a recent case where EPA's approval of a State Plan was challenged on the grounds that it did not provide adequate assurances of personnel and funding, the Agency defended its approval in large part by reference to the State Governor's request for an additional $250,000 for the budget of the State Agency. *NRDC, et al.*, v. *EPA*,—F. 2d—, 5 ERC (1st Cir., 1973), post judgment submission of EPA in response to Court order.

To remedy this defect, EPA should require, as a prerequisite to approval of any proposed SCS, a showing that the funds necessary to hire competent personnel, place and maintain monitors, telemeter continuous emission and ambient air quality data to the State agency, and pay for enforcement are available. This funding should not be the responsibility of the State agency. The cost of administering an SCS is a cost of pollution control, just as the cost of any continuous emission control system is, whether it be flue gas desulfurization or clean fuel. Rather than merely encourage the States to require licensing fees to defray to additional costs of SCS (preamble to proposed rulemaking, 38 Fed. Reg. at 25700), the Agency should make such fees a prerequisite to approval of any such system. This was urged within the agency in earlier consideration of the SCS regulation,[13] it should be added to the proposed rule. Wtihout requiring assurance of adequate personnel and funding, the rulemaking cannot meet the legal standard of the Act.

II. DISPERSION SHOULD BE PROHIBITED BECAUSE IT REPRESENTS BAD POLICY

A. *The Use of Dispersion Rather Than Continuous Controls Endangers the Environment Because it Fails to Curtail Atmospheric Loading With Dangerous Pollutants.*—The dangers of atmospheric loading of sulfur oxides, particulate matter, nitrogen oxides, and other toxic materials are increasing well known in the scientific community and within EPA. Evidence is accumulating rapidly that the health effects of sulfur oxides are related to sulfates, interacting with particulate matter and perhaps nitrogen oxides. Sulfates are dangerous to health at concentrations an order of magnitude smaller than the present National Primary Standard for sulfur oxides. Concentrations prevailing in the skies over much of the urbanized areas of the country are often as high as twice those found to have adverse effects on health. Unlike sulfur dioxide, sulfates are distributed in dangerous concentrations over wide areas, not just at the points where plumes from specific sources touch down.

Similarly, a growing body of evidence exists that injury to the biosphere is growing rapidly as a result of acid rains. Like sulfate concentrations, acid rains are related to the total quantity of sulfur oxides emitted into the biosphere rather than the ground level concentrations now regulated under EPA's National Standard for sulfur oxides. Evidence exists that in some parts of the country, the level of acid accumulated in the biosphere has reached very close to a critical point at which natural neutralizing agents can no longer prevent major damage.[14]

As a matter of policy then, it is highly inappropriate for the Agency to be considering regulations which would allow continued atmospheric loading with sulfur oxides and other pollutants. Rather than seeking to legitimize further atmospheric loading, the Agency should be considering additional National Standards that would have the effect of reducing drastically the total quantities of these pollutants emitted into the air. The failure to do so represents a serious dereliction of statutory duty; the present proposal, given this context, may violate the statutory duty to protect public health and welfare.

B. *SCS Is Not a Reliable Method for Meeting the National Air Quality Standards.*—Over a year ago, EPA declared that SCS was not acceptable because, among other things, it was not a reliable means of meeting the National Standards. 37 Fed. Reg. 15095 (July 27, 1972). In the present proposal, it has not presented sufficient basis for a different conclusion.

To begin with, EPA nowhere explicates a consistent or defensible definition of the concept of reliability. An acceptable definition must be grounded in the words of the statute itself, which states that the State Plan must contain measures that "insure attainment and maintenance" of the National Standards, § 110(a)(2)(B), 42 U.S.C. § 1857c–5(a)(2)(B). Plainly, the meaning of this phrase is that Standards must be met at all times, not merely some percentage of the time. Measures that will accomplish full-time compliance are available, and have been adopted by most States. Low sulfur fuel, the most commonly adopted means for attaining the Standards, allows 100% compliance with emission limitations. Similarly, 100% compliance can be attained through a flue gas desulfurization tech-

[13] EPA briefing paper, cited previously, at Tab 6, page 4.

[14] The conclusions stated here are widely shared in the scientific community. We have listed, as a bibliography to these comments, some of the studies in which these conclusions are stated. They are incorporated by reference, as are additional studies to the same effect not listed.

nology, by designing in redundant systems so that malfunctions can be compensated for by switching modules, by ceasing operations when malfunctions become sufficiently serious to prevent compliance with emission standards, and, in some cases, by retaining the capacity to switch to clean fuel during periods of equipment malfunctions.

In considering the SCS proposal, however, EPA appears to have operated under a different, and statutorily deficient, concept of reliability. An EPA briefing paper on SCS (ICS), referred to previously, adopts the position that SCS is acceptable if it attains the ability to prevent violations of National Standards 80 percent of the time.[15] The assumption behind this conclusion, stated in the briefing paper, is that can be attained by continuous emission control equipment, since it must be down for scheduled maintenance a certain number of days and will be down because of malfunction an additional number of days each year.

This assumption is in error for a number of reasons. First, it assumes that the bench mark for reliability is flue gas desulfurization equipment, though using clean fuel enables 100 percent compliance. Second, it assumes that plants will continue to operate regardless of the fact that their pollution control equipment is not functioning—an assumption contrary to the command of the statute, as noted previously. Third, it assumes that scheduled down time will be randomly distributed, as will days of atmospheric stagnation that would assure violation of the National Standards. In fact, air pollution agencies have the power to order scheduled maintenance of pollution control equipment to occur at times when the likelihood of stagnation is lowest. And as a matter of fact, to take one important class of sources, utilities would ordinarily schedule maintenance during the spring and fall because their system load is lowest at that time of the year; it so happens that in most areas of the country, spring and fall are also the seasons when stagnant weather is least likely to occur.

Using this false conception of the degree of reliability required by the statute, and this erroneous set of assumptions about how reliable continuous control measures actually are, the Agency was apparently willing to accept evidence from interested parties tending to show that SCS systems now in operation can achieve similar levels of reliability. In justification of its conclusion that SCS has now been shown reliable, the Agency cites three examples: two smelters operated by ASARCO in Tacoma, Wash., and El Paso, Tex.; and a power plant operated by the Tennessee Valley Authority.

None of these examples constitutes adequate basis for a conclusion with respect to reliability. EPA makes no claim that any of them have shown SCS capable of preventing all violations of National and State Air Quality Standards; instead, it bears its conclusion on data allegedly showing that violations of National and State Standards at each plant have declined to some level it chooses to call tolerable. In fact, even these conclusions are extremely suspect. First, the data from the TVA plant is entirely generated by TVA, a highly interested party. EPA makes no claim that this data was ever tested independently, and it could not, as far as our investigation has been able to discover.[16] Second, the data from both ASARCO plants are flawed by a basic defect. State officials from both Texas and Washington State have indicated to NRDC that the dramatic reductions in violations shown in EPA's figures are in large measure owing to the operators' ability to program the system to avoid sensors. Mr. Kellog, meteorologist with the Puget Sound Air Pollution Control Authority, stated to us that in his judgment, curtailment of operations at the Tacoma smelter begins only when the plume moves toward sensors, rather than when conditions merit curtailment to avoid excessive concentrations at any point in the region affected by the plant.[17] Likewise, officials in the El Paso local agency reported that the violations from the ASARCO smelter there increased 100 percent with the addition of ten monitors.[18]

But the crucial deficiency in the data presented by EPA is even more telling. In both cases, the smelters operate in geographical locations that allow them to

[15] EPA briefing paper, cited previously, at Tab 2, page 2.

[16] NRDC contacted six key EPA officials (in the Office of Stationary Source Enforcement, Office of Air Quality Planning an dStandards, and EPA Region IV office) concerning this data to learn that the federal agency had no monitoring data, indeed no information whatsoever, on the TVA Paradise plant other than TVA's own reports.

[17] Telephone interview with Mr. Kellogg, PSAPCA, November 8, 1973.

[18] Telephone interview with Rubin Chrismeyer, El Paso City-County Health Unit, October 26, 1973.

operate without regard to ground level concentrations much of the time. In Tacoma, the smelter is located close to Puget Sound, where PSAPCA has no meters. And in El Paso, the smelter is able to "aim" its emissions into Mexico much of the time, where no air pollution agency maintains sensors. One State official, who requested that he not be identified, told us that "the only closed-loop system" he knew about was that " a hell of a lot of copper is smelted there when the wind blew towards Mexico.[19]

In short, what the Tacoma and El Paso examples appear to show is the weaknesses in an SCS, rather than its strengths. Both smelters appear to have used their systems merely to learn how to avoid preventing excessive concentrations where they could be detected, rather than how to assure protecting persons from harm. It seems fair to assume that similar learning will occur elsewhere if SCS is widely adopted.

These examples point up the general weakness in SCS that it is open to manipulation in so many ways that it cannot be counted on to protect the public. Clearly, the number of "violations" depends in the first instance on the number and placement of sensors, which is in turn dependent on the financial resources of the control agency. Placement will certainly be the subject of negotiation between source and agency, and this will surely produce anomalies. The number of violations also depends on the time intervals of the standards. Washington State regulations, for example, provide a standard for a 5 minute interval, but the Tacoma smelter now operates under a blanket variance from this, apparently because it would have produced too many violations. By contrasts, the National Primary Standards' short test interval is one day, assuring a maximum number of violations of 365 in a year. (The National Secondary Sulfur Oxides Standard is for a three hour interval, but it is generally conceded that it is set at such a high concentration that its regulatory effect is nil.[20])

In sum, it would appear that virtually any figures on the reliability of SCS for assuring attainment of National Standards at all points affected by a source are bound to be little more than artifacts of the Standard itself and the location and number of sensors. Even more important, it would appear that the improved compliance that allegedly comes with experience is in fact little more than increased sophistication at finding the weaknesses in the monitoring systems surrounding the plant.

C. *SCS Is Not an Enforceable Method for Meeting the National Standards.*—Compliance with SCS is inherently difficult to enforce, because the degree of compliance depends on hundreds or thousands of low visibility actions each year by the plant operator, any one of which can produce a violation of National Standards. By contrast, an enforcement agency finds it relatively easy to enforce a low sulfur fuel requirement, or requirement to install flue gas cleaning equipment, both of which require essentially one or a few very visible actions on the part of the source owner. If a State agency takes seriously the enforcement of an SCS, it will assure jobs for an entire enforcement apparatus on a permanent basis. There will have to be enforcement attorneys to present each violation to a judicial-type administrative body, and such a body to hear each case. Where such bodies already exist, SCS would guarantee imposing immense new responsibilities on them, which most are not now prepared to handle. Where a decision of an administrative agency is contested, there will be appeals to State judicial systems, with attendant expense and strain on the judicial system. Though the proposed requirement that sources forgo the defense that they are not responsible for violations within a given zone (proposed App. P, § 3.2 (d) (1) will help, EPA should not fool itself into believing that meter readings showing violations will not be contested vigorously. PSAPCAs experience with the Tacoma smelter proves this point forcefully.

There will also be a continual temptation on the part of the State agency to compromise the real reliability of the system in assuring compliance with Na-

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[19] This statement is confirmed in the "Report of Investigation at American Smelting and Refining Company, El Paso, Texas," Texas APCS, Feb. 2–4, 1971, referenced in the Federal Register notice to this proposed rulemaking, 38 Fed. Reg. 25700, Sept. 14, 1973. The report states, (p. 7) :

"There is not curtailment everyday. When the wind is from the Northeast, regardless of the weather conditions, the plant does not curtail because the plume goes into Mexico."

[20] See Vaughn, Dennis J. and Edward J. Stanek II. "Sulfur Dioxide Standards: Primary More Restrictive Than Secondary?", Journal of the Air Pollution Control Association, December 1973, pp. 1039–1041; and Comments on Proposed Revision of Environmental Protection Agency Regulations on Sulfur Oxides Secondary Standards, submitted by Louis Slesin, Dept. of Urban Studies and Planning, MIT, July 11, 1973.

tional Standards rather than "waste" the agency's resources fighting "minor" infractions.

More likely, for the reasons cited above at 7. State agencies will simply not have the manpower and competence to police the sophisticated SCS. Most State agencies do not have the budgets to support the enforcement apparatus necessary to assure compliance. For example, NRDC's investigation of the Tacoma and El Paso smelters mentioned in the EPA proposal repeatedly unearthed mistakes and uncertainties as the number of violations recorded by the agency. The El Paso agency reported violations three times a week from the ASARCO plant yet the State agency could not confirm these figures when NRDC inquired. In November the New Mexico State agency sent NRDC computer printouts of monitor readings indicating numerous violations caused by the same plant, only to inform us this month that these figures were wholly inaccurate because the "technician had mistakenly been doubling the readings." The PSAPCA presented NRDC with three different and inconsistent inventories of violations from the Tacoma smelter for the same period, and confessed to be mystified at the basis of the figures presented by EPA in the preamble to the proposed rulemaking. Kentucky State officials told NRDC that they do not monitor the TVA Paradise plant cited in the EPA preamble at all.

The proposed regulations do not even provide an enforceable means of assuring ultimate compliance with emission limitations through continuous controls. The proposed regulations' requirement of a "formal review" at suggested intervals of 5 years (proposed App. P. § 3.2(g)), and of a "description" of the source's contemplated program of research on continuous means of control (proposed App. P. § 3.2(b)(5)) would provide no means for a State agency to force a source even to undertake a particular line of research, let alone install any specific equipment.

D. *The Use of SCS Cannot be Limited to a Small Number of "Isolated Sources".*—In proposing to authorize the use of SCS, the Agency makes a good deal of its intent to confine the use of SCS to "a limited number of sources" "under carefully controlled conditions." Proposed App. P. Introduction. Through this intent is laudable, NRDC doubts that SCS can be confined. Once the Agency has certified that such systems are legal, reliable, and enforceable, it has placed itself on the slippery slope, with no clear way of drawing a line between a source where SCS is acceptable and where it is not. Given the heavy financial incentive for sources to seek adoption of SCS, it can be expected that sources will seek State and Federal approval for more and more dubious applications of SCS, each relying on a previously granted SCS permit granted to a source only slightly less dubious than itself. Having abandoned the high ground of prohibiting SCS altogether, EPA will inevitably be forced through court action or the threat of it, to capitulate to such demand.

The present proposal is itself a vivid illustration of this danger. When EPA first expressed its objection of SCS on grounds of reliability and enforceability rather than the clear principle of illegality, it virtually invited source owners to produce data designed to allay the Agency's concern. This data has not been produced, and had the predictable effect, even though, as we pointed out previously, pages 13–19, it is riddled with assumptions and defects that vitiate the conclusions drawn from it. Nonetheless, given the immense industry stake in obtaining approval for SCS, and the political divisions within EPA itself, this data has been used as an excuse for the Agency to reverse its better judgment. In the much less visible circumstances of individual applications to use SCS, it can be expected that these forces will operate with even more effect.

E. *The Proposed Regulations Would Allow the Use of SCS in Heavily Populated Areas.*—The proposal is written to contain the use of SCS to what it calls "isolated sources" of pollution. This isolation is defined in terms of other air pollution sources, rather than people, however. Proposed App. P. § 1.0. As as result, nothing prevents the application of SCS to sources such as the Tacoma and El Paso smelters, located within plume range of highly concentrated populations. In our view it is unconscionable for the Agency to adopt a policy of continued atmospheric loading in any such area. Redefining the meaning of "isolated" to prevent this outcome, while it would not in our view make the regulation any more acceptable under the statute, would at least provide some assurance that the public would not, in large numbers, be exposed to continued high levels of sulfates and other toxic materials.

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U.S. Environmental Protection Agency,
May 2, 1974.

Subject : Definition of Significant Risk.
From : J. F. Finklea, M.D., Director, NERC–RTP.
To : Bernard J. Steigerwald.

Attached is a draft of the requested document defining significant risk to health. The delay in preparation of this draft was caused by our need to do additional work on the acid-sulfate aerosol problem before writing this paper.

Levels of Air Pollutants Associated With Adverse Health Effects and With Significant Risks to Health

(By J. F. Finklea, D. I. Hammer, and G. I. Love)

Estimates of pollutant levels associated with adverse health effects can provide a rational point of departure from which to assess the impact of ambient air quality deterioration. The soundest of such estimates are likely to be ascertained from the current U.S. Primary Air Quality Standards. The Clean Air Act requires that primary air quality standards be set to fully protect the public health and that these standards contain an adequate margin of safety. Thus the law assumes there exists a "no known effects" threshold for each pollutant and for every adverse health effect. Moreover, the Clean Air Act requires that the primary standards be set to fully protect both specifically susceptible subgroups and health members of the population. One can define significant risk in many ways, the most prudent definition would be any adverse health effect, in other words, the present standards without any safety margin. Another more troublesome but undeniably defensible definition would be the threshold concentration at which there is a demonstrable increase in mortality.

Adverse health effects include both the aggravation of preexisting diseases and increased frequency of health disorders. In addition, good preventive medicine would dictate that evidence for an increased risk of future disease is an adverse health effect. Discussion of what constitutes an adverse effect may become quite vigorous at times. Most reasonable men would agree that mortality (death) and morbidity (illness) constitute adverse effects. However, pollutant exposures are usually not the sole cause of death or the sole cause of any single disease or group of disorders. Furthermore, with few exceptions unique disorders do not follow exposure to the pollutants for which we have established primary ambient air quality standards. There is even more room for honest disagreement when one tries to ascertain which changes in body function indicate a risk for clinical disease and which are either simply adaptive or of uncertain significance.

Especially susceptible population segments include persons with pre-existing diseases which may be aggravated by exposure to elevated levels of pollutants in the ambient air. Some quantitative information is available on the aggravating effects of air pollutants on asthma, chronic obstructive lung disease and chronic heart disease. Asthmatics constitute two to five percent of the general population; three to five percent of the adult population report persistent chronic respiratory disease symptoms; and seven percent of the general population report heart disease severe enough to limit their activity. The distribution of these conditions by age, sex, ethnic group, social status, and place of residence is better defined by other reports. One could legitimately be concerned about the aggravating effects of air pollutants on a number of other susceptible population segments; persons with hemolytic neoplasms, premature infants and patients with multiple handicaps. Little quantitative information exists about the aggravating effects of pollutants on these individuals.

In addition to the aggravation of symptoms in persons who are already ill, air pollutants may also increase the risk in the general population for the development of certain disorders. Many if not all of the general population may experience irritation symptoms involving the eyes or respiratory tract during episodic air pollution exposures. Similarly, even healthy members of the general population may experience impaired mental activity or decreased physical performance after sufficiently high pollution exposures. The general population, especially families with young children, is almost universally susceptible to common acute respiratory illnesses including colds, sore throats, bronchitis and pneumonia. Air pollutants can increase either the frequency or severity of these disorders.

Personal air pollution with cigarette smoke, occupational exposures to irritating dusts and fumes and possibly familial factors increase the risk of developing chronic obstructive lung disease and respiratory cancers in large segments of our population. Ambient air pollutants also can contribute to the development of these disorders. A few animal studies indicate that air pollutants may also accelerate atherosclerosis and coronary artery disease. These conditions affect most of our adult population even though they may be clinically silent. There is legitimate concern but few reliable studies to indicate that air pollutants may cause embryotoxicity, fetotoxicity, teratogenesis and mutagenesis. It is difficult to define which segment of the unborn population might be most at risk. In fact

these events are poorly recorded and the relevant existing data are not readily accessible.

Safety margins contained in the present primary air quality standards may be estimated by comparing the present standards to the best judgement estimate of the effects threshold for each pollutant. As previously mentioned, one method of defining significant risk is to accept the best judgement estimates for adverse health effects and sacrifice the safety margins summarized by pollutant in Table 1.

Sulfur dioxide, acid sulfate aerosols and total suspended particulates are considered together because the assessment of their effects is based largely upon community studies in which it is difficult if not impossible to disentangle the effects attributable to one pollutant from those attributable to another pollutant or to a mixture of the pollutants. Studies which were initially thought to have considered isolated exposures to urban particulates really involved exposures containing substantial amounts of acid aerosols or particulate sulfates. With regard to the short-term standards, aggravation of preexisting cardiorespiratory symptoms in the elderly, aggravation of asthma and irritation of the respiratory tract seem to occur a level lower than those permitted by the relevant primary ambient air quality standards.

The effects noted at sulfur dioxide and suspended particulate levels lower than the standard are in our opinion most likely due to elevated levels of finely divided suspended particulate acid sulfate aerosols which arise from reactions involving sulfur dioxide, particulates and other pollutants in the atmosphere. Our best judgement estimates for threshold levels of suspended sulfates in ambient air are further detailed in Table 2 along with illustrative health risks that might accompany exposures substantially above each threshold. Suspended sulfates are the best available though far from perfect proxy for acid sulfate aerosol exposures.

Three points are worth emphasizing: first, the estimates for sulfur oxides and particulates are based on community studies; second, the estimated effects thresholds for particulate sulfates are an order of magnitude lower than those for sulfur dioxide or total suspended particulates; and third, the safety margins present in the ambient air quality standards for sulfur oxides and particulates are quite modest being in all cases less than the standard itself. For the long-term standards, one must realize that average estimates do not always adequately consider the effects of annual repeated short-term peak exposures. For example the lowest best judgment estimate for an effects threshold for increased prevalence of chronic respiratory disease symptoms is based upon annual average estimates in a smelter community where repeated short-term peak exposures occurred. The lowest annual average exposures involving less marked fluctuations in short-term levels were considerably higher. The safety margins contained in the annual average standards seem only slightly more adequate than was the case with the short-term standards.

Nitrogen oxide exposures are now controlled on the basis of an ambient air quality standard for nitrogen dioxide. Investigators have expressed concern that exposures to organic nitrates, nitrous acid, nitric acid and suspended particulate nitrates have not been adequately considered. In fact, preliminary epidemiologic data have associated the aggravation of asthma with suspended nitrate levels of about 4–6 $\mu g/m^3$ per 24 hours. There is no short term Federal standard for nitrogen dioxide. The existing long-term standard, seems adequate with a margin of safety somewhat greater than those for sulfur oxides and suspended particulates.

Adverse health effects attributable to *carbon monoxide* differ markedly from those associated with the other ambient air quality pollutants. Decreased oxygen transport and interferences with tissue respiratory mechanisms result in a different array of worrisome effects. Clinical studies of carbon monoxide effects predominate. A limited number of experimental animal studies and population studies involving certain of the adverse effects associated with cigarette smoking may also be relevant. The existing 8 hour and 1 hour standards permit a 130% and 82% margin of safety, respectively at sea level. At higher altitudes ($\geq$1500 meters). These safety margins would both be less than 100%.

Adverse health effects associated with *photochemical oxidant exposures* involve a different set of considerations. Photochemical oxidants include compounds other than ozone which are quite irritating to the eyes. Ozone itself is thought to be radiomimetic thus focusing concern on accelerating aging, increased risk for malignancies, mutagenesis, embrytoxicity and teratogenesis. Information on sus-

ceptibility to acute respiratory disease, risk for mutations and impaired fetal survival is limited to animal studies. Photochemical oxidants are of interest for another reason, many of the studies were conducted some years ago before research methodologies were refined. These pioneer studies may not have adequately addressed the problem. In estimating effects thresholds, there is little uncertainty regarding irritation phenomenon and a great deal of uncertainty when considering other adverse effects. No estimates are possible for two of the more severe health effects—accelerated aging and malignancies. It is also worth emphasizing that assessment of potentially grave health effects depends on a small number of largely unconfirmed studies.

Several factors must be kept in mind when considering the calculation of safety margins presented in Table 1. First, safety margins are not as precise as the percentage estimates would at first seem to indicate because of the underlying uncertainties in measurement methods and in estimates of effects thresholds. Second, consistency in safety margins was not a major consideration in setting primary ambient air quality standards. Third, the apparent margins of safety have decreased as more complete health studies on susceptible populations have become available. Fourth, the safety margins contained in the primary ambient air quality standards are much smaller than those maintained for the control of ionizing radiation and most environmental chemicals. In no case does the safety margin for a pollutant clearly exceed the standards for that pollutant. Even the most extreme best judgment safety margin is less than ten times the relevant standard. Finally, there is little or no safety margin associated with the sulfur dioxide-suspended particulate-fine particulate sulfate combination. In general, therefore, little or no deterioration of air quality can occur without a subsequent increase in adverse health effects.

Another definition of significant risk might be the earliest level at which increases in daily mortality are observed. This definition can be reasonably applied only to sulfur dioxide, acid sulfate aerosols measured as suspended sulfate and total suspended particulate. Such values are summarized in Table 3. It is our best judgment that there is a significant risk for increased mortality over an urban region for 24 hours if sulfur dioxide levels exceed 400 ug/m^3, if suspended sulfates exceed 25 ug/m^3 or if total suspended particulates exceed 300 ug/m^3. Exposures of this magnitude or larger to small areas where people do not spend an entire day or where susceptible infirmed or apparently healthy elderly persons do not reside might still be deemed permissable. For example, acceptable occupational exposures involving limited numbers of health prescreened adults exposed for 40 hours or less each week might be allowed to exceed significant risk levels for the general population.

Another approach to the significant risk problem would be to recognize the lowest achievable ambient pollution levels consistent with competing broad national goals, calculate the probable resulting unavoidable health damages and endeavor to reduce these health damages as soon as possible. Finally, one could attempt a formal cost-benefit analysis but it is likely that this approach would be most controversial at the present time because health damage functions are not yet precisely defined.

TABLE 1.—EFFECTS THRESHOLD, BEST CHOICE SIGNIFICANT RISK LEVELS AND SAFETY MARGINS CONTAINED IN PRIMARY AMBIENT AIR QUALITY STANDARDS

Pollutant	Lowest best judgment estimate for effects threshold and best choice for significant risk levels		Adverse health effect	U.S. primary air quality standard	Margin of safety* (percent)
	Concentration	Average time			
Sulfur dioxide	300 to 400 ug/m³	24 hr	Mortality increase	365 ug/m³	None
	91 ug/m³	Annual	Increased frequency of acute respiratory disease	80 ug/m³	14
Total suspended particulates	250 to 300 ug/m³	24 hr	Mortality increase	260 ug/m³	None
	70 to 250 ug/m³	do	Aggravation of respiratory disease	260 ug/m³	None
	100 ug/m³	Annual	Increased frequency of chronic bronchitis	75 ug/m³	33
Suspended sulfates	10 ug/m³	24 hr	Increased infections in asthmatics	None	None
	15 ug/m³	Annual	Increased lower respiratory infections in children	None	None
Nitrogen dioxide	140 ug/m³	do	Increased severity of acute respiratory illness in children	100 ug/m³	40
Carbon monoxide	23 ug/m³	8 hr	Diminished exercise tolerance in heart patients	10 ug/m³	**130
	73 ug/m³	1 hr	Diminished exercise tolerance in heart patients	40 ug/m³	**82
Photochemical oxidants	200 ug/m³	do	Increased susceptibility to infection	160 ug/m³	25

*Safety margin equals effects threshold minus standard divided by standard X 100.

**Safety margins based upon carboxyhemoglobin levels would be 100 percent for the 8 hr standard and 67 percent for the 1 hr standard.

TABLE 2.—THRESHOLD AND ILLUSTRATIVE HEALTH RISKS FOR SELECTED AMBIENT LEVELS OF SUSPENDED SULFATES

Adverse health effect	Threshold concentration and exposure duration	Illustrative health risk		
		Definition	Level	Sulfur dioxide equivalent
Increase in daily mortality	25 $\mu g/m^3$ for 24 hr or longer	2½ percent increase in daily mortality	38 $\mu g/m^3$ for 24 hr	600 $\mu g/m^3$ for 24 hr.
Aggravation of heart and lung disease in the elderly	9 $\mu g/m^3$ for 24 hr or longer	50-percent increase in symptom aggravation	48 $\mu g/m^3$ for 24 hr	750 $\mu g/m^3$ for 24 hr.
Aggravation of asthma	6 to 10 $\mu g/m^3$ for 24 hr	75-percent increase in frequency of asthma attacks.	30 $\mu g/m^3$ for 24 hr	450 $\mu g/m^3$ for 24 hr.
Excess acute lower respiratory disease in children	13 $\mu g/m^3$ for several yr	50-percent increase in frequency	20 $\mu g/m^3$ annual average	100 to 250 $\mu g/m^3$ annual average.
Excess risk for chronic bronchitis	10 to 15 $\mu g/m^3$ for up to 10 yr	50-percent increase in risk	15 to 20 $\mu g/m^3$ annual average	100 to 250 $\mu g/m^3$ annual average.

TABLE 3.—BEST JUDGMENT ESTIMATES FOR "SIGNIFICANT RISK" LEVELS FOR EXPOSURES TO SULFUR OXIDES AND SUSPENDED PARTICULATES USING THE MORTALITY CRITERIA

Adverse effect	24-hr exposure level (ug/m³)		
	Sulfur dioxide	Suspended sulfate	Total suspended particulates
Mortality threshold	400	25	300

Mr. Randolph. Mr. President, the conference report on the Energy Supply and Environmental Coordination Act of 1974 is the end product of more than 6 months' work in the Senate. This legislation is concerned with matters that were earlier addressed in the Emergency Energy Act, S. 2589, which was unwisely vetoed by the President. It contains provisions to alleviate conditions like those imposed on this country by the severe energy shortage which struck last winter and which could affect us again.

The conference report before the Senate is not a hastily conceived measure. Nor is it one written in a panic induced by sharply reduced foreign petroleum supplies. The energy crisis, I must emphasize, is not a situation that developed suddenly last autumn. It had been developed for many years as our appetite for oil grew faster than domestic production. The Arab oil embargo merely precipitated a serious shortage earlier than expected.

The Energy Supply and Environmental Coordination Act is our response to a new set of energy and environment realities with which we must live in the years ahead. The production of energy in amounts adequate for our national needs is an attainable goal compatible with our commitment to environmental protection. The writing of this legislation took place with that conviction in mind.

The provisions of this measure were determined following a series of productive conferences with conferees from the House of Representatives. I am particularly appreciative of the contributions of my able colleague from West Virginia, Representative Harley A. Staggers, the distinguished chairman of the House Commerce Committee. His awareness of the issues and his deep concern for the problems we faced were evident in his approach to the task of the conference. He exhibited leadership that enabled us to bring our deliberations to a successful conclusion with realistic and workable legislation.

Major contributions to our efforts were made by Senator Edmund S. Muskie, the knowledgeable chairman of our Subcommittee on Environmental Pollution, and by the diligent Senator from Tennessee (Mr. Baker), the ranking minority member of the committee. I am likewise indebted, for their helpful participation and contributions, to Senator Montoya and Senator Stafford, the other conferees from the Public Works Committee.

The Senate was also represented in the conference by members of the Committee on Interior and Insular Affairs, including the distinguished chairman of that committee, Senator Jackson, and Senators Bible and Fannin.

Mr. President, a major feature of this legislation are provisions facilitating many electric powerplants to switch to coal from other fuels. Coal is our most abundant domestic energy resource, one for

which we need not rely on foreign countries. If this Nation is to be successful in approaching energy self-sufficient in the years ahead, we must increase your utilization of America's most abundant energy resource—coal.

This legislation serves as a clear signal that a national commitment to a greater use of coal is an essential part of our natural energy production system. Furthermore, it reflects congressional belief that the use of coal is not incompatible with environmental quality enhancement. Under the provisions of this measure, according to the EPA, some 23 electric generating plants now fueled with oil or natural gas should be able to convert to coal. These plants involve approximately 40 generating units and produce a substantial amount of power.

It is important to stress that conversion to coal is not permitted in any area where such conversion would endanger public health or violate primary air quality standards. Nevertheless, according to preliminary data furnished by the EPA, units, should be able to immediately convert to coal consistent with the requirements set forth in this conference agreement. An additional 5 powerplants, involving 9 units, before conversion will require additional particulate controls and some 7 more powerplants, or 11 units, will require either low sulfur coal or stack gas scrubbers. **[Sec. 119(c) ESECA.]**

In recognition of the present public debate on the availability of sulfur oxide control, encouragement is provided under the conference agreement to the preferential use of low sulfur coal, at this time, rather than stack gas scrubbers.

The conversion of these 23 powerplants would require approximately 23 million tons of coal per year, or a 4-percent increase in our national demand for coal.

The authority granted by this legislation for powerplants to convert to coal carries with it a challenge. The coal industry, the utility industry and the suppliers of pollution control equipment all must work together so that coal can achieve its potential in meeting the energy needs of our country and the American people. The passage of this legislation also will be a signal of our confidence in coal as a reliable source of energy in the future and our commitment to energy self-sufficiency. Such a signal should encourage the flow of capital resources to the mining industry and thus enable it to make the substantial investments necessary for assured, long-termed coal supplies.

Mr. President, adoption of this conference report by the Senate and its signing by the President will not relieve us, however, of our responsibilities in the energy field. Despite some relief since the lifting of the Arab oil embargo, the energy crisis is far from being resolved.

Government must return without delay to the formulation and implementation of a national fuels and energy policy aimed at freeing this Nation from excessive reliance on foreign energy supplies. It has often been pointed out that our country, with 7 percent of the world's population, consumes more than one-third of the world's energy. This fact makes it essential that energy occupy a continuing and prominent position in our planning for the future.

Other energy legislation will be brought to the Senate. Today we have an opportunity to take an important step forward in meeting immediately our country's energy requirements in a realistic manner,

and I urge the Senate to take that step by approving this conference report.

Mr. Baker. Mr. President, I join my colleagues, the able chairmen of the Subcommittee on Environmental Pollution, the Senator from Maine (Mr. Muskie), and of the full committee, the Senator from West Virginia (Mr. Randolph), in congratulating the conferees on completing action on this valuable and necessary legislation.

The Senate version of H.R. 14368 made a number of improvements over the House version of the bill, and I referred to those when the bill was considered on the floor of the Senate. I am pleased to report that the conference version before us is still better in a number of respects.

I believe that the procedures and criteria have been much improved with regard to authority that the Federal Energy Administrator will be given to order powerplants and other major fuel burning sources to convert to coal.

The Federal Energy Administrator will make a number of determinations regarding the practicability of conversions and with regard to whether those plants have the capability and necessary plant equipment to convert. The Environmental Protection Agency, however, will make the vital determinations as to when and under what conditions such conversions can take place compatibly with Clean Air Act requirements. This division of responsibility, which was a feature of the Senate version of the bill, has been improved by dovetailing the administrative actions required of both agencies. For example, when an FEA order to convert to coal is proposed, EPA must indicate how soon and under what conditions the Clean Air Act requirements can be met. Only after such EPA notification can the coal conversion order take effect. **[Sec. 2(b)(1)(B) ESECA.]** This assures that we can have the maximum practicable conversion to coal over the years ahead while assuring that requirements for clean and healthful air are achieved.

I have faith that the momentum toward cleaner air which was begun with the 1970 amendments to the act will continue unabated. A principal reason for this faith is that—as the conference report clearly provides—before a long-term order by FEA to convert to coal takes effect and before the corresponding long term compliance date extension is granted by EPA—that is, one which extends beyond June 30, 1975, and which permits a utility to burn coal until 1979—EPA must approve a compliance plan, which includes the means for and schedule of compliance, that assures both that interim requirements can be met and that full compliance with more stringent requirements will be attained by 1979. **[Sec. 119(c) CAA.]**

This means that, for a compliance date extension beyond June 30, 1975, a stationary source which converts to coal must comply with primary standard conditions—low sulfur fuel, intermittent controls, continuous emission control devices, or a combination of these—and regional limitations, and, as soon as practicable but not later than 1979, must, pursuant to the plan it submits and has approved before the extension is granted, obtain either a long-term supply of complying coal or, if such coal is not available, another source of coal and a contract or other enforceable obligation for a continuous emission control device. In either event, the source must meet, by the end of its

compliance date extension, the most stringent degree of emission control that it would have had to meet by 1975 or 1977 under the State implementation plan.

These requirements should not delay coal conversions since EPA is required to develop the regulations governing plans for means for and schedules of compliance within 90 days after enactment and must make the requisite findings precedent to granting a compliance date extension within 60 days after it is proposed. **[Sec. 119(c)(2) (A) and (B) CAA.]**

The requirement in the conference report and in the statement of managers for a long-term supply of low-sulfur coal as the preferred method of compliance with the Clean Air Act requirements is one which I sponsored and which I support fully. This does not mean that the conferees intend to push utilities toward the use of low sulfur western coal. On the contrary, the long-term contracts are intended to provide a period in which high Btu, low sulfur eastern coal can be developed by the opening of new deep mines. **[Sec. 119(c)(2)(B)(i) CAA.]**

I am concerned about the conference report provision that powerplants unable to obtain sufficient low sulfur coal or coal alternatives to meet emission limitations applicable under the law must undertake to obtain continuous emission reduction systems which are capable of meeting these limitations by 1979 while burning high sulfur coal. **[Sec. 119(c)(2)(B)(ii) CAA.]** Although the term "continuous emission reduction system" is broad enough to encompass a broad range of technology, I foresee the possibility that certain specific solutions to the problem of sulfur oxide emissions might receive undue emphasis. For this reason, I want to emphasize that the term is meant to indicate any technology involving advanced techniques of combustion of coal—such as the fluidized-bed process—or after-treatment of combustion gases—for example flue gas desulfurization, better known as scrubber technology.

In my estimation, processes which attempt to after-treat combustion gases will not provide the ultimate solution to the sulfur problem. Such processes are of necessity ancillary to the power generation function and must therefore result in compounding power generation problems.

The limestone scrubbing technology, for instance, requires the reheating of cooled stack gases. This and other aspects of the technology entail a considerable cost in energy. Most current scrubbers experience problems with clogging and scaling, and compound environmental problems because they require large amounts of surfaced-mined materials and because they generate large quantities of limestone slurry which must be recovered, stored by ponding or otherwise disposed of. Eventually these problems with scrubbers may be resolved through technological advances. I recognize that only with a sufficient number of demonstrations by industry can this or any other technology be developed. We will make a serious mistake, however, if we dedicate technical research capacities only to the resolution of these problems to the exclusion of other technologies which involve fewer secondary environmental and energy problems than scrubbers. I believe that, in time, liquid or gaseous fuels derived from coal, solvent-refined coal and, fluidized bed combustion will prove to be better alternatives if the

coal and utility industries make large scale efforts to bring these technologies to fruition. Meanwhile, I trust that the Administrator of EPA will not proceed to order all powerplants converted to scrubbers before they are proved reliable, efficient, and cost effective.

Mr. President, the provisions of the conference report with respect to coal conversion and clean air requirements for stationary sources represent a remarkable conciliation of what have appeared to be incompatible goals, that is, further use of our plentiful domestic fuel reserves and continued progress toward clean air. In these objectives and in its specific provisions, I believe that the bill may well serve as a model for other changes in the Clean Air Act that will be required in the months ahead.

I am reassured by the fact that we are at last dealing in this conference report with the critical need of the automobile industry for some temporary extensions in the very stringent requirements which were laid down in the 1970 amendments. **[Sec. 202 CAA.]** This will permit the auto makers to achieve maximum fuel economy, to explore alternative types of engines, and to make reliable progress toward taking the automobile out of the air pollution problem.

I support fully the action the committee has taken today to reaffirm the intention of the National Environmental Policy Act that such environmental regulatory actions as those under the Clean Air Act are not among those for which environmental impact statements are needed. **[Sec. 7(c) ESECA.]** NEPA was intended to inject environmental consciousness into agencies with construction, development and other such responsibilities. It would be redundant and in many cases counterproductive if applied to EPA's environmental regulatory activities.

The extension of the authorizations for appropriations for the Clean Air Act contained in this legislation means that we will be able to consider other changes in the act that may be required without the pressing deadlines of funding expiration facing us. **[Secs. 104(c), 212(i) and 316 CAA.]**

In conclusion, Mr. President, I wish to congratulate my colleagues, the distinguished chairman of the Public Works Committee (Mr. Randolph), the most able and dedicated subcommittee chairman (Mr. Muskie), the knowledgeable ranking minority member of the subcommittee (Mr. Buckley), and my able minority colleague on the conference committee (Mr. Stafford). All of these gentlemen have contributed immeasurably to developing legislation which is much improved over the previous versions which were considered earlier in this session. I urge prompt and unanimous support of this legislation by my Senate colleagues and prompt signature of the bill by the President.

The Presiding Officer. The question is on agreeing to the conference report.

The conference report was agreed to.

CHAPTER 3

H.R. 14368, Together With Debate and Report

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93D CONGRESS
2D SESSION

H. R. 14368

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 1974

Mr. HASTINGS introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; PURPOSE.

(a) This Act may be cited as the "Energy Supply and Environmental Coordination Act of 1974".

(b) The purpose of this Act is to provide for a means to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment, and to provide requirements for reports respecting energy resources.

SEC. 2. SUSPENSION AUTHORITY.

Title I of the Clean Air Act is amended by adding at the end thereof the following new section:

"ENERGY EMERGENCY AUTHORITY

"SEC. 119. (a) (1) (A) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before the earlier of June 30, 1975, or one year after the date of enactment of this section, temporarily suspend any stationary source fuel or emission limitation as it applies to any person, if the Administrator finds that such person will be unable to comply with such limitation during such period solely because of unavailability of types or amounts of fuels. Any suspension under this paragraph and any interim requirement on which such suspension is conditioned under paragraph (3) shall be exempted from any procedural requirements set forth in

this Act or in any other provision of local, State, or Federal law; except as provided in subparagraph (B).

"(B) The Administrator shall give notice to the public of a suspension and afford the public an opportunity for written and oral presentation of views prior to granting such suspension unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In any case, before granting such a suspension he shall give actual notice to the Governor of the State, and to the chief executive officer of the local government entity in which the affected source or sources are located. The granting or denial of such suspension and the imposition of an interim requirement shall be subject to judicial review only on the grounds specified in paragraphs (2) (B) and (2) (C) of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304 (a) (2) or 307 (b) and (c) of this Act.

"(2) In issuing any suspension under paragraph (1) the Administrator is authorized to act on his own motion without application by any source or State.

"(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and

practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the source receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and (C) requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available to that person (as determined by the Administrator). For purposes of clause (C) of this paragraph, availability of natural gas or petroleum products which enable compliance shall not make a suspension inapplicable to a source described in subsection (b) (1) of this section.

"(4) For purposes of this section:

"(A) The term 'stationary source fuel or emission limitation' means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under this Act (other than section 303, 111(b), or 112) or contained in an applicable implementation plan, and which is designed to limit station-

ary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type or grade or pollution characteristic thereof.

"(B) The term 'stationary source' has the same meaning as such term has under section 111(a)(3).

"(b)(1) Except as provided in paragraph (2) of this subsection, any fuel-burning stationary source—

"(A) which is prohibited from using petroleum products or natural gas as fuel by reason of an order issued under section 10(a) of the Energy Supply and Environmental Coordination Act of 1974, or

"(B) which (i) the Administrator of the Environmental Protection Agency determines began conversion to the use of coal as fuel during the period beginning on September 15, 1973, and ending on the date of enactment of this section, and (ii) the Federal Energy Administrator determines should use coal after the earlier of June 30, 1975, or one year after the date of enactment of this section, after balancing on a plant-by-plant basis the environmental effects of such conversion against the need to fulfill the purposes of the Energy Supply and Environmental Coordination Act of 1974,

and which converts to the use of coal as fuel, shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source. For purposes of this paragraph, the term "began conversion" means action by the owner or operator of a source during the period beginning on September 15, 1973, and ending on the date of enactment of this section (such as entering into a contract binding on the operator of the source for obtaining coal, or equipment or facilities to burn coal; expending substantial sums to permit such source to burn coal; or applying for an air pollution variance to enable the source to burn coal) which the Administrator finds evidences a decision (made prior to such date of enactment) to convert to burning coal as a result of the unavailability of an adequate supply of fuels required for compliance with the applicable implementation plan, and a good faith effort to expeditiously carry out such decision.

"(2) (A) Paragraph (1) of this subsection shall apply to a source only if the Administrator finds that emissions from the source will not materially contribute to a significant risk to public health and if the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved, after notice to interested persons and opportunity for presentation of views (includ-

ing oral presentation of views). A plan submitted under the preceding sentence shall be approved only if it provides (i) for compliance by the means specified in subparagraph (B), and in accordance with a schedule which meets the requirements of such subparagraph; and (ii) that such source will comply with requirements which the Administrator shall prescribe to assure that emissions from such source will not materially contribute to a significant risk to public health. The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

"(B) The Administrator shall prescribe regulations requiring that any source to which this subsection applies submit and obtain approval of its means for and schedule of compliance. Such regulations shall include requirements that such schedules shall include dates by which such sources must—

"(i) enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining a long-term supply of coal which enables such source to achieve the emission reduction required by subparagraph (C), or

"(ii) if coal which enables such source to achieve

such emission reduction is not available to such source, (I) enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining a long-term supply of other coal or coal byproducts, and (II) take steps to obtain continuous emission reduction systems necessary to permit such source to burn such coal or coal byproducts and to achieve the degree of emission reduction required by subparagraph (C) (which steps and systems must have received prior approval of the Administrator as being adequate to effectuate the purposes of this section).

"(C) Regulations under subparagraph (B) shall require that the source achieve the most stringent degree of emission reduction that such source would have been required to achieve under the applicable implementation plan which was in effect on the date of enactment of this section (or if no applicable implementation plan was in effect on such date, under the first applicable implementation plan which takes effect after such date). Such degree of emission reduction shall be achieved as soon as practicable, but not later than January 1, 1979; except that, in the case a source for which a continuous emission reduction system is required for sulful-related emissions, reduction of such emissions shall be

achieved on a date designated by the Administrator (but not later than January 1, 1979). Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable including requirements described in clauses (A) and (B) of subsection (a) (3).

"(D) The Administrator (after notice to interested persons and opportunity for presentation of views, including oral presentations of views, to the extent practicable) (i) may, prior to the earlier of June 30, 1975, or one year after the date of enactment of this section, and shall thereafter prohibit the use of coal by a source to which paragraph (1) applies if he determines that the use of coal by such source is likely to materially contribute to a significant risk to public health; and (ii) may require such source to use coal of any particular type, grade, or pollution characteristic if such coal is available to such source. Nothing in this subsection (b) shall prohibit a State or local agency from taking action which the Administrator is authorized to take under this subparagraph.

"(3) For purposes of this subsection, the term 'air pollution requirement' means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regula-

tion, including this Act (except for any requirement prescribed under this subsection or section 303), and which is designed to limit stationary source emissions resulting from combustion of fuels (including a restriction on the use or content of fuels). A conversion to coal to which this subsection applies shall not be deemed to be a modification for purposes of section 111(a) (2) and (4) of this Act.

"(4) A source to which this subsection applies may, upon the expiration of the exemption under paragraph (1), obtain a one-year postponement of the application of any requirement of an applicable implementation plan under the conditions and in the manner provided in section 110(f).

"(c) The Administrator may by rule establish priorities under which manufacturers of continuous emission reduction systems shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to users in air quality control regions with the most severe air pollution. No rule under this subsection may impair the obligation of any contract entered into before enactment of this section. No State or political subdivision may require any person to use a continuous emission reduction system for which priorities have been established under this subsection except in accordance with such priorities.

"(d) The Administrator shall study, and report to Con-

gress not later than six months after the date of enactment of this section, with respect to—

"(1) the present and projected impact on the program under this Act of fuel shortages and of allocation and end-use allocation programs;

"(2) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction systems would have on the total environment and on supplies of fuel and electricity;

"(3) the number of sources and locations which must use such technology based on projected fuel availability data;

"(4) priority schedule for implementation of continuous emission reduction technology, based on public health or air quality;

"(5) evaluation of availability of technology to burn municipal solid waste in these sources including time schedules, priorities analysis of unregulated pollutants which will be emitted and balancing of health benefits and detriments from burning solid waste and of economic costs;

"(6) projections of air quality impact of fuel shortages and allocations;

"(7) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time frames prescribed in the Act, including associated considerations of cost, time frames, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

"(8) proposed allocations of continuous emission reduction technology for nonsolid waste producing systems to sources which are least able to handle solid waste byproduct, technologically, economically, and without hazard to public health, safety, and welfare; and

"(9) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentration of sulfur dioxide in the ambient air.

"(e) No State or political subdivision may require any person to whom a suspension has been granted under subsection (a) to use any fuel the unavailability of which is the basis of such person's suspension (except that this preemption shall not apply to requirements identical to Federal interim requirements under subsection (a) (1)).

"(f) (1) It shall be unlawful for any person to whom a suspension has been granted under subsection (a) (1) to

violate any requirement on which the suspension is conditioned pursuant to subsection (a) (3).

"(2) It shall be unlawful for any person to violate any rule under subsection (c).

"(3) It shall be unlawful for the owner or operator of any source to fail to comply with any requirement under subsection (b) or any regulation, plan, or schedule thereunder.

"(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i) (3).

"(g) Beginning January 1, 1975, the Administrator shall publish at no less than one hundred and eighty-day intervals, in the Federal Register the following:

"(1) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (b) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsections.

"(2) Up-to-date findings on the impact of this section upon—

"(A) applicable implementation plans, and

"(B) ambient air quality.

"(h) Nothing in this section shall affect the power of

the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.

"(i) (1) In order to reduce the likelihood of early phaseout of existing electric generating facilities during the energy emergency, any electric generating powerplant (A) which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on January 1, 1974) of the operator of such plant, (B) for which a certification to that effect has been filed by the operator of the plant with the Environmental Protection Agency and the Federal Power Commission, and (C) for which the Commission has determined that the certification has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single one-year postponement as provided in paragraph (2).

"(2) Prior to the date on which any plant eligible under paragraph (1) is required to comply with any requirement of an applicable implementation plan, such source may apply (with the concurrence of the Governor of the State in which the plant is located) to the Administrator to postpone the applicability of such requirement to such

source for not more than one year. If the Administrator determines, after balancing the risk to public health and welfare which may be associated with a postponement, that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increases to pay for such costs, and other appropriate factors, then the Administrator shall grant a postponement of any such requirement.

"(3) The Administrator shall, as a condition of any postponement under paragraph (2), prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph (2).

"(j) (1) The Administrator may, after public notice and opportunity for presentation of views in accordance with section 553 of title 5, United States Code, and after consultation with the Federal Energy Administrator, designate persons to whom fuel exchange orders should be issued. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any suspension under subsection (a) of this section or conversion to coal to which subsection (b) applies or of any allocation under section 10 of the Energy Supply and Environmental Coordination Act of 1974 or the Emergency Petroleum Allocation Act of 1973.

"(2) The Federal Energy Administrator shall issue ex-

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change orders to such persons as are designated by the Administrator under paragraph (1) requiring the exchange of any fuel subject to allocation under the preceding Acts effective no later than forty-five days after the date of the designation under paragraph (1), unless the Federal Energy Administrator determines, after consultation with the Administrator, that the costs or consumption of fuel, resulting from such exchange order, will be excessive.

"(3) Violation of any exchange order issued under paragraph (2) shall be a prohibited act and shall be subject to enforcement action and sanctions in the same manner and to the same extent as a violation of any requirement of the regulation under section 4 of the Emergency Petroleum Allocation Act of 1973."

SEC. 3. IMPLEMENTATION PLAN REVISIONS.

(a) Section 110(a) of the Clean Air Act is amended in paragraph (3) by inserting "(A)" after "(3)" and by adding at the end thereof the following new subparagraph:

"(B) (1) For any air quality control region in which there has been a conversion to coal under section 119(b), the Administrator shall review the applicable implementation plan and no later than one year after the date of such conversion determine whether such plan must be revised in order to achieve the national primary standard which the plan implements. If the Administrator determines that any such plan

is inadequate, he shall require that a plan revision be submitted by the State within three months after the date of notice to the State of such determination. Any plan revision which is submitted by the State after notice and public hearing shall be approved or disapproved by the Administrator, after public notice and opportunity for public hearing, but no later than three months after the date required for submission of the revised plan. If a plan provision (or portion thereof) is disapproved (or if a State fails to submit a plan revision), the Administrator shall, after public notice and opportunity for a public hearing, promulgate a revised plan (or portion thereof) not later than three months after the date required for approval or disapproval.

"(2) Any requirement for a plan revision under paragraph (1) and any plan requirement promulgated by the Administrator under such paragraph shall include reasonable and practicable measures to minimize the effect on the public health of any conversion to which section 119(b) applies."

(b) Subsection (c) of section 110 of the Clean Air Act (42 U.S.C. 1857 C–5) is amended by inserting "(1)" after "(c)"; by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and by adding the following new paragraph:

"(2) (A) The Administrator shall conduct a study and

shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than three months after date of enactment of this section, on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.

"(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they

are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any applicable implementation plan submitted by a State on such plan's including a parking surcharge regulation.

"(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

"(D) For purposes of this paragraph, the term 'parking surcharge regulation' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles. The term 'management

of parking supply' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations. The term 'preferential bus/carpool lane' shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses and/or carpools."

SEC. 4. MOTOR VEHICLE EMISSIONS.

(a) Section 202 (b) (1) (A) of the Clean Air Act is amended by striking out "1975" and inserting in lieu thereof "1977"; and by inserting after "(A)" the following: "The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5) (A) of this subsection for light-duty vehicles and engines manufactured during model year 1975."

(b) Section 202 (b) (1) (B) of such Act is amended by striking out "1976" and inserting in lieu thereof "1978"; and by inserting after "(B)" the following: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufac-

tured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that emissions of such vehicles and engines may not exceed 2.0 grams per vehicle mile."

(c) Section 202 (b) (5) (A) of such Act is amended to read as follows:

"(5) (A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1) (A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within sixty days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1) (A) of this sub-

section) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977."

(d) Section 202(b)(5)(B) of the Clean Air Act is repealed and the following subparagraphs redesignated accordingly.

SEC. 5. CONFORMING AMENDMENTS.

(a)(1) Section 113(a)(3) of the Clean Air Act is amended by striking out "or" before "112(c)", by inserting a comma in lieu thereof, and by inserting after "hazardous emissions)" the following: ", or 119(f) (relating to priorities and certain other requirements)".

(2) Section 113(b)(3) of such Act is amended by striking out "or 112(c)" and inserting in lieu thereof ", 112(c), or 119(f)".

(3) Section 113(c)(1)(C) of such Act is amended by striking out "or section 112(c)" and inserting in lieu thereof ", section 112(c), or section 119(f)".

(4) Section 114(a) of such Act is amended by inserting "119 or" before "303".

(b) Section 116 of the Clean Air Act is amended by inserting "119 (b), (c), and (e)," before "209".

SEC. 6. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT.

(a) Any allocation program provided for in section

10 of this Act or in the Emergency Petroleum Allocation Act of 1973, shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the country designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

(b) In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal to which section 119 of the Clean Air Act applies, the Department of Health, Education, and Welfare shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c) No action taken under section 10 of this Act shall, for a period of one year after initiation of such action, be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856). However, before any action under section 10 of this Act that has a significant impact on the environment is

taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under section 10 of this Act which will be in effect for more than a one-year period or any action to extend an action taken under section 10 of this Act to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act notwithstanding any other provision of this Act.

(d) In order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of

facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 (83 Stat. 856) for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

SEC. 7. ENERGY CONSERVATION STUDY.

(a) The Federal Energy Administrator shall conduct a study on potential methods of energy conservation and, not later than six months after the date of enactment of this Act, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

(1) the energy conservation potential of restricting exports of fuels or energy-intensive products or goods, including an analysis of balance of payments and foreign relations implications of any such restrictions;

(2) federally sponsored incentives for the use of public transit, including the need for authority to require additional production of buses or other means of public transit and Federal subsidies for the duration of the energy emergency for reduced fares and additional expenses incurred because of increased service;

(3) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource

recovery in order to reduce energy demand, including the economic costs and fuel consumption tradeoff which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials;

(4) the costs and benefits of electrifying rail lines in the United States with a high density of traffic; including (A) the capital costs of such electrification, the oil fuel economies derived from such electrification, the ability of existing power facilities to supply the additional power load, and the amount of coal or other fossil fuels required to generate the power required for railroad electrification, and (B) the advantages to the environment of electrification of railroads in terms of reduced fuel consumption and air pollution and disadvantages to the environment from increased use of fossil fuel such as coal; and

(5) means for incentives or disincentives to increase efficiency of industrial use of energy.

(b) Within ninety days of the date of enactment of this Act, the Secretary of Transportation, after consultation with the Federal Energy Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public mass transporta-

tion systems and encouraging increased ridership as alternatives to automobile travel.

(c) Such plan shall include, but shall not be limited to—

(1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the provision of expanded mass transportation service in urban areas;

(2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under section 142 (a) (2) of title 23, United States Code (the "Federal Aid Highway Act of 1973"), for the purpose of providing additional capacity for and encouraging increased use of public mass transportation systems;

(3) recommendations for a program of demonstration projects to determine the feasbility of fare-free and low-fare urban mass transportation systems, including reduced rates for elderly and handicapped persons during nonpeak hours of transportation;

(4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;

(5) recommendations on the feasibility of providing tax incentives for persons who use public mass transportation systems.

(d) In consultation with the Federal Energy Administrator, the Secretary of Transportation shall make an investigation and study for the purpose of conserving energy and assuring that the essential fuel needs of the United States will be met by developing a high-speed ground transportation system between the cities of Tijuana in the State of Baja California, Mexico, and Vancouver in the Province of British Columbia, Canada, by way of the cities of Seattle in the State of Washington, Portland in the State of Oregon, and Sacramento, San Francisco, Fresno, Los Angeles, and San Diego in the State of California. In carrying out such investigation and study the Secretary shall consider, but shall not be limited to—

(1) the efficiency of energy utilization and impact on energy resources of such a system, including the future impact of existing transportation systems on energy resources if such a system is not established;

(2) coordination with other studies undertaken on the State and local levels; and

(3) such other matters as he deems appropriate.

The Secretary of Transportation shall report the results of the study and investigation pursuant to this Act, together

with his recommendations, to the Congress and the President no later than December 31, 1974.

SEC. 8. REPORTS.

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 2 through 7 of this title.

SEC. 9. FUEL ECONOMY STUDY.

Title II of the Clean Air Act is amended by redesignating section 213 as section 214 and by adding the following new section:

"FUEL ECONOMY IMPROVEMENT FROM NEW MOTOR VEHICLES

"SEC. 213. (a) (1) The Administrator and the Secretary of Transportation shall conduct a joint study, and shall report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committees on Public Works and Commerce of the United States Senate within one hundred and twenty days following the date of enactment of this section, concerning the practicability of establishing a fuel economy improvement standard of 20 per centum for new motor vehicles manufactured during and after model year 1980. Such study and report shall include, but not be limited to, the technological problems of meeting any such standard, including the lead-

time involved; the test procedures required to determine compliance; the economic costs associated with such standards, including any beneficial economic impact; the various means of enforcing such standard; the effect on consumption of natural resources, including energy consumed; and the impact of applicable safety and emission standards. In the course of performing such study, the Administrator and the Secretary of Transportation shall utilize the research previously performed in the Department of Transportation, and the Administrator and the Secretary shall consult with the Federal Energy Administrator, the Chairman of the Council on Environmental Quality, and the Secretary of the Treasury. The Office of Management and Budget may review such report before its submission to Congress but the Office may not revise the report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting such report. In connection with such study, the Administrator may utilize the authority provided in section 307(a) of this Act to obtain necessary information.

"(2) For the purpose of this section, the term 'fuel economy improvement standard' means a requirement of a percentage increase in the number of miles of transportation provided by a manufacturer's entire annual production of new motor vehicles per unit of fuel consumed, as determined

for each manufacturer in accordance with test procedures established by the Administrator pursuant to this Act. Such term shall not include any requirement for any design standard or any other requirement specifying or otherwise limiting the manufacturer's discretion in deciding how to comply with the fuel economy improvement standard by any lawful means."

SEC. 10. COAL CONVERSION AND ALLOCATION.

(a) The Federal Energy Administrator shall, to the extent practicable and consistent with the purposes of this Act, by order, after balancing on a plant-by-plant basis the environmental effects of use of coal against the need to fulfill the purposes of this Act, prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this Act, has the capability and necessary plant equipment to burn coal. Any installation to which such an order applies shall be permitted to continue to use coal or coal byproducts as provided in section 119(b) of the Clean Air Act. To the extent coal supplies are limited to less than the aggregate amount of coal supplies which may be necessary to satisfy the requirements of those installations which can be expected to use coal (including installations to which orders may apply under this subsection),

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the Administrator shall prohibit the use of natural gas and petroleum products for those installations where the use of coal will have the least adverse environmental impact. A prohibition on use of natural gas and petroleum products under this subsection shall be contingent upon the availability of coal, coal transportation facilities, and the maintenance of reliability of service in a given service area. The Federal Energy Administrator shall require that fossil-fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable of using coal as a primary energy source instead of or in addition to other fossil fuels. No fossil-fuel-fired electric powerplant may be required under this section to be so designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) if an adequate and reliable supply of coal is not available and is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Federal Energy Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

(b) The Federal Energy Administrator may by rule prescribe a system for allocation of coal to users thereof in order to attain the objective specified in this section.

(c) It shall be unlawful for any person to violate any provision of this section, or to violate any rule, regulation, or order issued pursuant to any such provision.

(d) (1) Whoever violates any provision of subsection (c) shall be subject to a civil penalty of not more than $2,500 for each violation.

(2) Whoever willfully violates any provision of subsection (c) shall be fined not more than $5,000 for each violation.

(3) It shall be unlawful for any person to offer for sale or distribute in commerce any product or commodity in violation of an applicable order or regulation issued pursuant to this section. Any person who knowingly and willfully violates this subsection after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to this section shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(4) Whenever it appears to any person authorized by the Federal Energy Administrator to exercise authority under this section that any individual or organization has engaged, is engaged, or is about to engage in acts or practices con-

stituting a violation of subsection (c), such person may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by subsection (c).

(5) Any person suffering legal wrong because of any act or practice arising out of any violation of subsection (c) may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this paragraph shall authorize any person to recover damages.

(c) Authority to issue or enforce orders or rules under this section shall expire on midnight, June 30, 1975, but the expiration of such authority shall not affect any administrative or judicial proceeding pending on such date which relates to any act or omission before such date.

SEC. 11. ENERGY INFORMATION REPORTS.

(a) For the purpose of assuring that the Administrator, the Congress, the States, and the public have access to and are able to obtain reliable energy information throughout the duration of this Act, the Administrator, in addition to and

not in limitation of any other authority, shall request, acquire, and collect such energy information as he determines to be necessary to assist in the formulation of energy policy or to carry out the purposes of this Act or the Emergency Petroleum Allocation Act of 1973. The Administrator shall promptly promulgate rules under the authority of subsection (b) of this section requiring reports of such information to be submitted to the Administrator at least every ninety calendar days.

(b) In carrying out the provisions of subsection (a) the Administrator shall have the power to—

(1) require, by rule, any person who is engaged in the production, processing, refining, transportation by pipeline, or distribution (other than at the retail level) of energy resources to submit reports;

(2) sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents;

(3) require of any person, by general or special order, answers in writing to interrogatories, requests for report, or other information; and such answers or submissions shall be made within such reasonable period and under oath or otherwise as the Administrator may determine; and

(4) to administer oaths.

(c) For the purpose of verifying the accuracy of any energy information requested, acquired, or collected by the Administrator, officers or employees duly designated by him upon presenting appropriate credentials and a written notice to the owner, operator, or at reasonable times and in a reasonable manner, enter and inspect any facility or business premises, to inventory and sample any stock of energy resources therein, and to examine and copy records, reports, and documents relating to energy information.

(d) (1) The Administrator shall exercise the authorities granted to him under subsection (b) to develop within 30 days after the date of enactment of this Act, as full and accurate a measure as is reasonably practicable of—

(A) domestic reserves and production;

(B) imports; and

(C) inventories;

of petroleum products, natural gas, and coal.

(2) For each calendar quarter beginning with the first complete calendar quarter following the date of enactment of this Act, the Administrator shall develop and publish quarterly reports containing the following:

(A) Report of petroleum product, natural gas, and coal imports; relating to country of origin, arrival point, quantity received, geographic distribution within the United States.

(B) Report of domestic reserves and production of crude oil, natural gas, and coal.

(C) Report of crude oil activity; relating capacity of producers' allocations to refiners, and fuels to be made.

(D) Report of inventories, nationally, and by region and State—

(i) for various refined petroleum products, relating refiners, refineries, suppliers to refiners, share of market, and allocation fractions;

(ii) for various refined petroleum products, previous quarter deliveries and anticipated 3-month available supplies;

(iii) for refinery yields of the various refined petroleum products, percent of activity, and type of refinery;

(iv) with respect to the summary of anticipated monthly supply of refined petroleum products amount of set aside for assignment by the State, anticipated State requirements, excess or shortfall of supply, and allocation fraction of base year; and

(v) with respect to LPG by State and owner: quantities stored, and existing capacities, and previous priorities on types, inventories of suppliers, and changes in supplier inventories.

(e) Where a person shows that all or part of the energy information required by this section is being reported by such person to another Federal agency, the Administrator may exempt such person from providing all or part of such energy information to him, and upon such exemption, such Federal agency shall, notwithstanding any other provision of law, provide such energy information to the Administrator.

(f) Upon a showing satisfactory to the Administrator by any person that any energy information obtained under this section from such person or from a Federal agency would, if made public, divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person, such information, or portion thereof, shall be confidential in accordance with the provisions of section 1905 of title 18 of the United States Code, except that such information or part thereof shall not be deemed confidential for purposes of disclosure, upon request, to (1) any delegate of the Federal Energy Administration for the purpose of carrying out this Act, (2) the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the General Accounting Office when necessary to carry out those agencies' duties and responsibilities under this and other statutes, and (3) the Congress or any committee of Congress upon request of the

Chairman. The provisions of this section shall expire on midnight, June 30, 1975.

(g) As used in this section—

(1) the term "Federal agency" shall have the meaning of the term "executive agency" as defined in section 105 of title 5, United States Code;

(2) the term "energy information" includes all information in whatever form on mineral fuel reserves, exploration, extraction, and natural energy resources (to include petrochemical feedstocks) wherever located; production, distribution, and consumption wherever carried on; and includes matters such as corporate structure and proprietary relationships, costs, prices, capital investment and assets, and other matters directly related thereto, wherever they exist; and

(3) the term "person" means any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose; wherever situated, domiciled, or doing business, who directly or through other persons subject to their control do business in any part of the United States, its territories and possessions, or the District of Columbia.

(h) Information obtained by the Administrator under authority of this Act shall be available to the public in

accordance with the provisions of section 552 of title 5, United States Code.

(i) Any United States district court within the jurisdiction of which any inquiry is carried on may, upon petition by the Attorney General at the request of the Administrator, in the case of refusal to obey a subpena or order of the Administrator issued under this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

SEC. 12. DEFINITION.

The term "Federal Energy Administrator" means the Administrator of the Federal Energy Administration established by H.R. 11793, Ninety-third Congress (popularly known as the Federal Energy Administration Act of 1974) if H.R. 11793 is enacted; except that until such Administrator takes office, such term means any officer of the United States designated by the President.

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 93-1013

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT OF 1974

APRIL 26, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H.R. 14368]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 14368) to provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; PURPOSE

(a) This Act, including the following table of contents, may be cited as the "Energy Supply and Environmental Coordination Act of 1974".

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(b) The purpose of this Act is to provide for a means to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment, and to provide requirements for reports respecting energy resources.

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SEC. 2. SUSPENSION AUTHORITY

Title I of the Clean Air Act is amended by adding at the end thereof the following new section:

"ENERGY-RELATED AUTHORITY

"SEC. 119. (a)(1)(A) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before the earlier of June 30, 1975, or one year after the date of enactment of this section, temporarily suspend any stationary source fuel or emission limitation as it applies to any person, if the Administrator finds that such person will be unable to comply with such limitation during such period solely because of unavailability of types or amounts of fuels. Any suspension under this paragraph and any interim requirement on which such suspension is conditioned under paragraph (3) shall be exempted from any procedural requirements set forth in this Act or in any other provision of local, State, or Federal law; except as provided in subparagraph (B).

"(B) The Administrator shall give notice to the public of a suspension and afford the public an opportunity for written and oral presentation of views prior to granting such suspension unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In any case, before granting such a suspension he shall give actual notice to the Governor of the State, and to the chief executive officer of the local government entity in which the affected source or sources are located. The granting or denial of such suspension and the imposition of an interim requirement shall be subject to judicial review only on the grounds specified in paragraphs (2)(B), (2)(C), or (2)(D) of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304(a)(2) or 307(b) and (c) of this Act.

"(2) In issuing any suspension under paragraph (1) the Administrator is authorized to act on his own motion without application by any source or State.

"(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the source receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and (C) requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available to that person (as determined by the Administrator). For purposes of clause (C) of this paragraph, availability of natural gas or petroleum products which enable compliance shall not make a suspension inapplicable to a source described in subsection (b)(1) of this section.

"(4) For purposes of this section:

"(A) The term 'stationary source fuel or emission limitation' means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under this Act (other than section 303, 111(b), or 112) or contained in an applicable implementation plan *(other than a requirement imposed under authority described in section 110(a)(2)(F)(v))*, and which is designed to limit stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type or grade or pollution characteristic thereof.

"(B) The term 'stationary source' has the same meaning as such term has under section 111(a)(3).

"(b)(1) Except as provided in paragraph (2) of this subsection, any fuel-burning stationary source—

"(A) which is prohibited from using petroleum products or natural gas as fuel by reason of an order issued under section 10(a) of the Energy Supply and Environmental Coordination Act of 1974, or

"(B) which (i) the Administrator of the Environmental Protection Agency determines began conversion to the use of coal as fuel during the period beginning on September 15, 1973, and ending on the date of enactment of this section, and (ii) the Federal Energy Administrator determines should use coal after the earlier of June 30, 1975, or one year after the date of enactment of this section, after balancing on a plant-by-plant basis the environmental effects of such conversion against the need to fulfill the purposes of the Energy Supply and Environmental Coordination Act of 1974,

and which converts to the use of coal as fuel, shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source. For purposes of this paragraph, the term 'begin conversion' means action by the owner or operator of a source during the period beginning on September 15, 1973, and ending on the date of enactment of this section (such as entering into a contract binding on the operator of the source for obtaining coal, or equipment or facilities to burn coal; expending substantial sums to permit such source to burn coal; or applying for an air pollution variance to enable the source to burn coal) which the Administrator finds evidences a decision (made prior to such date of enactment) to convert to burning coal as a result of the unavailability of an adequate supply of fuels required for compliance with the applicable implementation plan, and a good faith effort to expeditiously carry out such decision.

"(2)(A) Paragraph (1) of this subsection shall apply to a source only if the Administrator finds that emissions from the source will not materially contribute to a significant risk to public health and if the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved, after notice to interested persons and opportunity for presentation of views (including oral presentation of views). A plan submitted under the preceding sentence shall be approved only if it (i) meets the requirements of regulations prescribed under subparagraph (B); and (ii) provides that such source will comply with requirements which the Administrator shall prescribe to assure that emissions from such source will not materially contribute to a significant risk to public health. The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

"(B) The Administrator shall prescribe regulations requiring that any source to which this subsection applies submit and obtain approval of its means for and schedule of compliance. Such regulations shall include requirements that such schedules shall include dates by which such sources must—

"(i) enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining a long-term supply of coal which enables such source to achieve the emission reduction required by subparagraph (C), or

"(ii) if coal which enables such source to achieve such emission reduction is not available to such source, enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining (I) a long-term supply of other coal or coal *derivatives*, and (II) continuous emission reduction systems necessary to permit such source to burn such coal or coal *derivatives* and to achieve the degree of emission reduction required by subparagraph (C).

"(C) Regulations under subparagraph (B) shall require that the source achieve the most stringent degree of emission reduction that such source would have been required to achieve under the applicable implementation plan which was in effect on the date of enactment of this section (or if no applicable implementation plan was in effect on that date, under the first applicable implementation plan which takes effect after such date). Such degree of emission reduction shall be achieved as soon as practicable, but not later than January 1, 1979; except that, in the case a source for which a continuous emission reduction system is required for sulfur-related emissions, reduction of such emissions shall be achieved on a date designated by the Administrator (but not later than January 1, 1979). Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable including requirements described in clauses (A) and (B) of subsection (a)(3) and requirements to file progress reports.

"(D) The Administrator (after notice to interested persons and opportunity for presentation of views, including oral presentations of views, to the extent practicable) (i) may, prior to the earlier of June 30, 1975, or one year after the date of enactment of this section, and shall thereafter prohibit the use of coal by a source to which paragraph (1) applies if he determines that the use of coal by such source is likely to materially contribute to a significant risk to public health; and (ii) may require such source to use coal of any particular type, grade, or pollution characteristic if such coal is available to such source. Nothing in this subsection (b) shall prohibit a State or local agency from taking action which the Administrator is authorized to take under this subparagraph.

"(3) For purposes of this subsection, the term 'air pollution requirement' means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including this Act (except for any requirement prescribed under this subsection, section 110(a)(2)(F)(v), or section 303), and which is designed to limit stationary source emissions resulting from combustion of fuels (including a restriction on the use or content of fuels). A conversion to coal to which this subsection applies shall not be deemed to be a modification for purposes of section 111(a)(2) and (4) of this Act.

"(4) A source to which this subsection applies may, upon the expiration of the exemption under paragraph (1), obtain a one-year postponement of the application of any requirement of an applicable implementation plan under the conditions and in the manner provided in section 110(f).

"(c) The Administrator may by rule establish priorties under which manufacturers of continuous emission reduction systems necessary to carry out subsection (b) shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to users in air quality control regions with the most severe air pollution. No rule under this subsection may impair the obligation of any contract entered into before enactment of this section. To the extent necessary to carry out this section, the Administrator may prohibit any State or political subdivision from requiring any person to use a continuous emission reduction system for which priorities have been established under this subsection except in accordance with such priorities.

"(d) The Administrator shall study, and report to Congress not later than six months after the date of enactment of this section, with respect to—

"(1) the present and projected impact on the program under this Act of fuel shortages and of allocation and end-use allocation programs;

"(2) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction systems would have on the total environment and on supplies of fuel and electricity;

"(3) the number of sources and locations which must use such technology based on projected fuel availability data;

"(4) priority schedule for implementation of continuous emission reduction technology, based on public health or air quality;

"(5) evaluation of availability of technology to burn municipal solid waste in these sources including time schedules, priorities analysis of unregulated pollutants which will be emitted and balancing of health benefits and detriments from burning solid waste and of economic costs;

"(6) projections of air quality impact of fuel shortages and allocations;

"(7) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time frames prescribed in the Act, including associated considerations of cost, time frames, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

"(8) proposed allocations of continuous emission reduction systems which do not produce solid waste to sources which are least able to handle solid waste byproducts of such systems; and

"(9) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentration of sulfur dioxide in the ambient air.

"(e) No State or political subdivision may require any person to whom a suspension has been granted under subsection (a) to use any fuel the unavailability of which is the basis of such person's suspension (except that this preemption shall not apply to requirements identical to Federal interim requirements under subsection (a)(3)).

"(f)(1) It shall be unlawful for any person to whom a suspension has been granted under subsection (a)(1) to violate any requirement on which the suspension is conditioned pursuant to subsection (a)(3).

"(2) It shall be unlawful for any person to violate any rule under subsection (c).

"(3) It shall be unlawful for the owner or operator of any source to fail to comply with any requirement under subsection (b) or any regulation, plan, or schedule thereunder.

"(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i)(3).

"(g) Beginning January 1, 1975, the Administrator shall publish at no less than one hundred and eighty-day intervals, in the Federal Register the following:

"(1) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (b) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsections.

"(2) Up-to-date findings on the impact of this section upon—

"(A) applicable implementation plans, and

"(B) ambient air quality.

"(h) Nothing in this section shall affect the power of the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.

"(i)(1) In order to reduce the likelihood of early phaseout of existing electric generating facilities, any electric generating powerplant (A) which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on January 1, 1974) of the operator of such plant, (B) for which a certification to that effect has been filed by the operator of the plant with the Environmental Protection Agency and the Federal Power Commission, and (C) for which the Commission has determined that the certification has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single one-year postponement as provided in paragraph (2).

"(2) Prior to the date on which any plant eligible under paragraph (1) is required to comply with any requirement of an applicable implementation plan, such source may apply (with the concurrence of the Governor of the State in which the plant is located) to the Administrator to postpone the applicability of such requirement to such source for not more than one year. If the Administrator determines, after balancing the risk to public health and welfare which may be associated with a postponement, that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increases to pay for such costs, and other appropriate factors, then the Administrator shall grant a postponement of any such requirement.

"(3) The Administrator shall, as a condition of any postponement under paragraph (2), prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph (2).

"(j)(1) The Administrator may, after public notice and opportunity for presentation of views in accordance with section 553 of title 5, United States Code, and after consultation with the Federal Energy Administrator, designate persons to whom fuel exchange orders should be issued. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any suspension under subsection (a) of this section or conversion to coal to which subsection (b) applies or of any allocation under section 10 of the Energy Supply and Environmental Coordination Act of 1974 or the Emergency Petroleum Allocation Act of 1973.

"(2) The Federal Energy Administrator shall issue exchange orders to such persons as are designated by the Administrator under paragraph (1) requiring the exchange of any fuel subject to allocation under the preceding Acts effective no later than forty-five days after the date of the designation under paragraph (1), unless the Federal Energy Administrator determines, after consultation with the Administrator, that the costs or consumption of fuel, resulting from such exchange order, will be excessive.

"(3) Violation of any exchange order issued under paragraph (2) shall be a prohibited act and shall be subject to enforcement action and sanctions in the same manner and to the same extent as a violation of any requirement of the regulation under section 4 of the Emergency Petroleum Allocation Act of 1973."

SEC. 3. IMPLEMENTATION PLAN REVISIONS

(a) Section 110(a) of the Clean Air Act is amended in paragraph (3) by inserting "(A)" after "(3)" and by adding at the end thereof the following new subparagraph:

"(B)(1) For any air quality control region in which there has been a conversion to coal to which section 119(b) applies, the Administrator shall review the applicable implementation plan and no later than one year after the date of such conversion determine whether such plan must be revised in order to achieve the national primary ambient air quality standard which the plan implements. If the Administrator determines that any such plan is inadequate, he shall require that a plan revision be submitted by the State within three months after the date of notice to the State of such determination. Any plan revision which is submitted by the State after notice and public hearing shall be approved or disapproved by the Administrator, after public notice and opportunity for public hearing, but no later than three months after the date required for submission of the revised plan. If a plan provision (or portion thereof) is disapproved (or if a State fails to submit a plan revision), the Administrator shall, after public notice and opportunity for a public hearing, promulgate a revised plan (or portion thereof) not later than three months after the date required for approval or disapproval.

"(2) Any requirement for a plan revision under paragraph (1) and any plan requirement promulgated by the Administrator under such paragraph shall include reasonable and practicable measures to minimize the effect on the public health of any conversion to which section 119(b) applies."

(b) Subsection (c) of section 110 of the Clean Air Act (42 U.S.C. 1857 C-5) is amended by inserting "(1)" after "(c)"; by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and by adding the following new paragraph:

"(2)(A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than three months after date of enactment of this section, on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.

"(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

"(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

"(D) For purposes of this paragraph, the term 'parking surcharge regulation' means a regulation imposing or requiring the imposition of any tax, surcharge,

fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles. The term 'management of parking supply' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations. The term 'preferential bus/carpool lane' shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses and/or carpools.

"(E) No standard, plan or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after the enactment of this paragraph by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, additional hearings shall be held in such area after such notice."

SEC. 4. MOTOR VEHICLE EMISSIONS

(a) Section 202(b)(1)(A) of the Clean Air Act is amended by striking out "1975" and inserting in lieu thereof "1977"; and by inserting after "(A)" the following: "The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5)(A) of this subsection for light-duty vehicles and engines manufactured during model year 1975."

(b) Section 202(b)(1)(B) of such Act is amended by striking out "1976" and inserting in lieu thereof "1978"; and by inserting after "(B)" the following: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that emissions of such vehicles and engines may not exceed 2.0 grams per vehicle mile."

(c) Section 202(b)(5)(A) of such Act is amended to read as follows:

"(5)(A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within sixty days. If he determines, in accordance with the provisions of this susbection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977."

(d) Section 202(b)(5)(B) of the Clean Air Act is repealed and the following subparagraphs redesignated accordingly.

SEC. 5. CONFORMING AMENDMENTS

(a)(1) Section 113(a)(3) of the Clean Air Act is amended by striking out "or" before "112(c)", by inserting a comma in lieu thereof, and by inserting after "hazardous emissions)" the following: ", or 119(f) (relating to energy-related authorities)".

(2) Section 113(b)(3) of such Act is amended by striking out "or 112(c)" and inserting in lieu thereof ", 112(c), or 119(f)".

(3) Section 113(c)(1)(C) of such Act is amended by striking out "or section 112(c)" and inserting in lieu thereof ", section 112(c), or section 119(f)".

(4) Section 114(a) of such Act is amended by inserting "119 or" before "303".

(b) Section 116 of the Clean Air Act is amended by inserting "119 (b), (c), and (e)," before "209".

SEC. 6. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT

(a) Any allocation program provided for in section 10 of this Act or in the Emergency Petroleum Allocation Act of 1973, shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the country designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

(b) In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal to which section 119 of the Clean Air Act applies, the Department of Health, Education, and Welfare shall through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c) No action taken under section 10 of this Act shall, for a period of one year after initiation of such action, be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856). However, before any action under section 10 of this Act that has a significant impact on the environment is taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under section 10 of this Act which will be in effect for more than a one-year period or any action to extend an action taken under section 10 of this Act to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act notwithstanding any other provision of this Act.

(d) In order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 (83 Stat. 856) for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

SEC. 7. ENERGY CONSERVATION STUDY

(a) The Federal Energy Administrator shall conduct a study on potential methods of energy conservation and, not later than 6 months after the date of enactment of this Act, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

(1) the energy conservation potential of restricting exports of fuels or energy-intensive products or goods, including an analysis of balance of payments and foreign relations implications of any such restrictions;

(2) federally sponsored incentives for the use of public transit, including the need for authority to require additional production of buses or other means of public transit and Federal subsidies for the duration of the energy emergency for reduced fares and additional expenses incurred because of increased service;

(3) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource recovery in order to reduce energy demand, including the economic costs and fuel consumption tradeoff which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials;

(4) the costs and benefits of electrifying rail lines in the United States with a high density of traffic; including (A) the capital costs of such electrification, the oil fuel economies derived from such electrification, the ability of existing power facilities to supply the additional power load, and the amount of coal or other fossil fuels required to generate the power required for railroad electrification, and (B) the advantages to the environment of electrification of railroads in terms of reduced fuel consumption and air pollution and disadvantages to the environment from increased use of fossil fuel such as coal; and

(5) means for incentives or disincentives to increase efficiency of industrial use of energy.

(b) Within ninety days of the date of enactment of this Act, the Secretary of Transportation, after consultation with the Federal Energy Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public mass transportation systems and encouraging increased ridership as alternatives to automobile travel.

(c) Such plan shall include, but shall not be limited to—

(1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the provision of expanded mass transportation service in urban areas;

(2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under section 142(a)(2) of title 23, United States Code (the "Federal Aid Highway Act of 1973"), for the purpose of providing additional capacity for and encouraging increased use of public mass transportation systems;

(3) recommendations for a program of demonstration projects to determine the feasibility of fare-free and low-fare urban mass transportation systems, including reduced rates for elderly and handicapped persons during nonpeak hours of transportation;

(4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;

(5) recommendations on the feasibility of providing tax incentives for persons who use public mass transportation systems.

SEC. 8. REPORTS

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 2 through 7 of this Act.

SEC. 9. FUEL ECONOMY STUDY

Title II of the Clean Air Act is amended by redesignating section 213 as section 214 and by adding the following new section:

"FUEL ECONOMY IMPROVEMENT FROM NEW MOTOR VEHICLES

"SEC. 213. (a)(1) The Administrator and the Secretary of Transportation shall conduct a joint study, and shall report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committees on Public Works and Commerce of the United States Senate within one hundred and twenty days following the date of enactment of this section, concerning the practicability of establishing a fuel economy improvement standard of 20 per centum for new motor vehicles manufactured during and after model year 1980. Such study and report shall include, but not be limited to, the technological problems of meeting any such standard, including the leadtime involved; the test procedures required to determine compliance; the economic costs associated with such standards, including any beneficial economic impact; the various means of enforcing such standard; the effect on consumption of natural resources, including energy consumed; and the impact of applicable safety and emision standards. In the course of performing such study, the Administrator and the Secretary of Transportation shall utilize the research previously

performed in the Department of Transportation, and the Administrator and the Secretary shall consult with the Federal Energy Administrator, the Chairman of the Council on Environmental Quality, and the Secretary of the Treasury. The Office of Management and Budget may review such report before its submission to Congress but the Office may not revise the report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting such report. In connection with such study, the Administrator may utilize the authority provided in section 307(a) of this Act to obtain necessary information.

"(2) For the purpose of this section, the term 'fuel economy improvement standard' means a requirement of a percentage increase in the number of miles of transportation provided by a manufacturer's entire annual production of new motor vehicles per unit of fuel consumed, as determined for each manufacturer in accordance with test procedures established by the Administrator pursuant to this Act. Such term shall not include any requirement for any design standard or any other requirement specifying or otherwise limiting the manufacturer's discretion in deciding how to comply with the fuel economy improvement standard by any lawful means."

SEC. 10. COAL CONVERSION AND ALLOCATION

(a) The Federal Energy Administrator shall, to the extent practicable and consistent with the purposes of this Act, by order, after balancing on a plant-by-plant basis the environmental effects of use of coal against the need to fulfill the purposes of this Act, prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this Act, has the capability and necessary plant equipment to burn coal. Any installation to which such an order applies shall be permitted to continue to use coal or coal derivatives as provided in section 119(b) of the Clean Air Act. To the extent coal supplies are limited to less than the aggregate amount of coal supplies which may be necessary to satisfy the requirements of those installations which can be expected to use coal (including installations to which orders may apply under this subsection), the Administrator shall prohibit the use of natural gas and petroleum products for those installations where the use of coal will have the least adverse environmental impact. A prohibition on use of natural gas and petroleum products under this subsection shall be contingent upon the availability of coal, coal transportation facilities, and the maintenance of reliability of service in a given service area. The Federal Energy Administrator shall require that fossil-fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable of using coal as a primary energy source instead of or in addition to other fossil fuels. No fossil-fuel-fired electric powerplant may be required under this section to be so designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) an adequate and reliable supply of coal is not available and is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Federal Energy Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

(b) The Federal Energy Administrator may by rule prescribe a system for allocation of coal to users thereof in order to attain the objective specified in this section.

(c) It shall be unlawful for any person to violate any provision of this section or section 11, or to violate any rule, regulation, or order issued pursuant to any such provision.

(d)(1) Whoever violates any provision of subsection (c) shall be subject to a civil penalty of not more than $2,500 for each violation.

(2) Whoever willfully violates any provision of subsection (c) shall be fined not more than $5,000 for each violation.

(3) It shall be unlawful for any person to offer for sale or distribute in commerce any product or commodity in violation of an applicable order or regulation issued pursuant to subsection (b). Any person who knowingly and willfully

violates this paragraph after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to subsection (b) shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(4) Whenever it appears to any person authorized by the Federal Energy Administrator to exercise authority under this section or section 11 that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of subsection (c), such person may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by subsection (c).

(5) Any person suffering legal wrong because of any act or practice arising out of any violation of subsection (c) may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this paragraph shall authorize any person to recover damages.

(e) Authority to issue or enforce orders or rules under subsections (a) and (b) of this section shall expire on midnight, June 30, 1975, but the expiration of such authority shall not affect any administrative or judicial proceeding pending on such date which relates to any act or omission before such date.

SEC. 11. ENERGY INFORMATION REPORTS

(a) For the purpose of assuring that the Federal Energy Administrator, the Congress, the States, and the public have access to and are able to obtain reliable energy information throughout the duration of this section, the Federal Energy Administrator, in addition to and not in limitation of any other authority, shall request, acquire, and collect such energy information as he determines to be necessary to assist in the formulation of energy policy or to carry out the purposes of this Act or the Emergency Petroleum Allocation Act of 1973. The Federal Energy Administrator shall promptly promulgate rules under the authority of subsection (b) of this section requiring reports of such information to be submitted to the Federal Energy Administrator at least every ninety calendar days.

(b) In carrying out the provisions of subsection (a) the Administrator shall have the power to—

(1) require, by rule, any person who is engaged in the production, processing, refining, transportation by pipeline, or distribution (other than at the retail level) of energy resources to submit reports;

(2) sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents;

(3) require of any person, by general or special order, answers in writing to interrogatories, requests for report, or other infomation; and such answers or submissions shall be made within such reasonable period and under oath or otherwise as the Federal Energy Administrator may determine; and

(4) to administer oaths.

(c) For the purpose of verifying the accuracy of any energy information requested, acquired, or collected by the Federal Energy Administrator, officers or employees duly designated by him upon presenting appropriate credentials and a written notice to the owner, operator, or at reasonable times and in a reasonable manner, enter and inspect any facility or business premises, to inventory and sample any stock of energy resources therein, and to examine and copy records, reports, and documents relating to energy information.

(d)(1) The Federal Energy Administrator shall exercise the authorities granted to him under subsection (b) to develop within 30 days after the date of enactment of this Act, as full and accurate a measure as is reasonably practicable of—

(A) domestic reserves and production;

(B) imports; and

(C) inventories;

of crude oil, residual fuel oil, or refined petroleum products, natural gas, and coal.

(2) For each calendar quarter beginning with the first complete calendar quarter following the date of enactment of this Act, the Federal Energy Administrator shall develop and publish quarterly reports containing the following:

(A) Report of petroleum product, natural gas, and coal imports; relating to country of origin, arrival point, quantity received, geographic distribution within the United States.

(B) Report of domestic reserves and production of crude oil, natural gas, and coal.

(C) Report of crude oil and refinery activity; relating allocation of crude oil to refiners with products to be derived from such crude oil.

(D) Report of inventories, nationally, and by region and State—

(i) for various refined petroleum products, relating refiners, refineries, suppliers to refiners, share of market, and allocation fractions;

(ii) for various refined petroleum products, previous quarter deliveries and anticipated 3-month available supplies;

(iii) for refinery yields of the various refined petroleum products, percent of activity, and type of refinery;

(iv) with respect to the summary of anticipated monthly supply of refined petroleum products amount of set aside for assignment by the State, anticipated State requirements, excess or shortfall of supply, and allocation fraction of base year; and

(v) with respect to LPG by State and owner: quantities stored, and existing capacities, and previous priorities on types, inventories of suppliers, and changes in supplier inventories.

(e) Where a person shows that all or part of the energy information required by this section is being reported by such person to another Federal agency, the Administrator may exempt such person from providing all or part of such energy information to him, and upon such exemption, such Federal agency shall, notwithstanding any other provision of law, provide such energy information to the Administrator.

(f) Upon a showing satisfactory to the Administrator by any person that any energy information obtained under this section from such person or from a Federal agency would, if made public, divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person, such information, or portion thereof, shall be confidential in accordance with the provisions of section 1905 of title 18 of the United States Code, except that such information or part thereof shall not be deemed confidential for purposes of disclosure, upon request, to (1) any delegate of the Federal Energy Administrator for the purpose of carrying out this Act and the Emergency Petroleum Allocation Act of 1973, (2) the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the General Accounting Office when necessary to carry out those agencies' duties and responsibilities under this and other statutes, and (3) the Congress or any committee of Congress upon request of the Chairman. The provisions of this section shall expire on midnight, June 30, 1975, but such expiration shall not affect any administrative or judicial proceeding pending on such date which relates to any act or omission before such date.

(g) As used in this section—

(1) the term "Federal agency" shall have the meaning of the term "executive agency" as defined in section 105 of title 5, United States Code;

(2) the term "energy information" includes all information in whatever form on fuel reserves, exploration, extraction, and energy resources (to include petrochemical feedstocks) wherever located; production, distribution, and consumption of energy and fuels wherever carried on; and includes matters relating to energy and fuels, such as corporate structure and proprietary relationships, costs, prices, capital investment and assets, and other matters directly related thereto, wherever they exist; and

(3) the term "person" means any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose; wherever situated, domiciled, or doing business, who directly or through other persons subject to their control do business in any part of the United States, its territories and possessions, the Commonwealth of Puerto Rico, or the District of Columbia.

(h) Information obtained by the Administrator under authority of this Act shall be available to the public in accordance with the provisions of section 552 of title 5, United States Code.

(i) Any United States district court within the jurisdiction of which any inquiry is carried on may, upon petition by the Attorney General at the request of the Administrator, in the case of refusal to obey a subpena or order of the Administrator issued under this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

SEC. 12. DEFINITION

For purposes of this Act and the Clean Air Act, the term "Federal Energy Administrator" means the Administrator of the Federal Energy Administration established by H.R. 11793, Ninety-third Congress (popularly known as the Federal Energy Administration Act of 1974) if H.R. 11793 is enacted; except that until such Administrator takes office, such term means any officer of the United States designated as Federal Energy Administrator by the President for purposes of this Act.

Purpose of the Legislation

The purpose of this legislation is to grant specific authority to increase the use of coal resources so as to increase the energy supplies available to the Nation, to obtain information about the energy supplies available to the Nation, and to permit certain adjustment of environmental requirements, so that the Nation's essential energy needs may be met in a manner which is consistent with our national commitment to protect and improve the environment.

In brief summary, the bill directs steps to be taken to make more effective use of our Nation's coal resources, authorizes and directs the Federal Energy Administrator to obtain information on the Nation's energy supply situation, and permits narrowly defined and limited variances from certain specific Clean Air requirements so as to effectuate proper coordination between measures taken with respect to energy supplies and measures respecting environmental protection and enhancement.

Basis for the Legislation

On December 10, 1973, the committee ordered reported for House consideration H.R. 11450, the predecessor of what finally became the "Energy Emergency Act" (S. 2589). At that time, the committee noted that, our Nation was confronted with an energy emergency of unprecedented scope whose dimensions were only then coming into sharp focus. A little over one month before the Arab oil-producing nations, then engaged in armed conflict with Israel, initiated a program to curtail their collective crude oil production in an attempt to influence U.S. policy in the Middle East. This was followed by a total embargo on shipments to the United States.

Even before this, our nation had drawn down its primary inventories of gasoline, distillates and heavy fuel oil to dangerous levels. As the embargo began to take hold it became clear that emergency actions would have to be taken to maintain vital industries and public services. Thus, the committee acted quickly to report omnibus legislation to equip the President with the necessary powers to cope with the developing situation.

As is well known this legislative effort failed when the final conference report was vetoed by the President and the Senate fell short in an attempt to override the veto.[1] In the interim, the American people survived the winter months due, in large part, to their willingness to significantly alter their life patterns and to begin cutting back on their use of energy. In general, governmental institutions responded well to the crises situation, but the need for additional authorities became evident.

Subsequently the embargo was lifted and things returned to a near-normal situation. Shortages still exist; but, with demand outstripping supply to the extent that it has over the past years, that is to be expected. Moreover, the potential for crises remains. Strikes, bad weather, a reassertion of the embargo, accelerated increases in demand—any of these alone could bring about a substantial energy short-fall in a relatively short time.

Convinced that comprehensive legislation was still needed, Chairman Staggers initiated a series of discussions and negotiations on the substance of the Energy Emergency Act with White House and administration representatives in an attempt to devise legislation which could overcome the objections of the Executive and achieve early enactment. These discussions were terminated after approximately two weeks without resolution. Fundamental policy differences continued to divide the administration and the committee.

Accordingly, a new bill, H.R. 13834, was introduced containing much of what was contained in the Energy Emergency Conference Agreement. Seeking to expedite the already protracted consideration of the energy legislation, Chairman Staggers scheduled hearings on this legislation before the full committee on April 2, 3, and 4, 1974. The committee began mark-up of this bill April 9, 1974, and continued to consider H.R. 13834 and amendments thereto through April 25, 1973.

At the conclusion of these considerations, the committee voted to delete from H.R. 13834, the provisions relating to coal conversion and coal allocation (section 105), energy information reports (section 122), and title II (relating to coordination of environmental requirements). The committee then voted to take up consideration of H.R. 14368, a bill introduced by Representative Hastings, on April 24, 1974, which incorporated these provisions. This bill, with minor amendments to sections 2–9, was ordered reported by voice vote.

In so doing the Committee seeks to bring before the House in a separate bill those essential parts of the comprehensive package of proposals on which there is substantial agreement. In the committee's view we should delay no longer certain steps pending resolution of the more controversial and far reaching questions presented in title I of H.R. 13834. At least three steps should be taken now. First, the Administrator of the Federal Energy Administration must be given, and must exercise, the authority to obtain all information necessary to accurately assess the Nation's current and future energy supply situa-

[1] The veto message cited objections to provisions of the bill which provided for reducing crude oil prices, providing federal aid to those unemployed by the energy crisis, and the granting of loans to homeowners and small businesses for energy conservation purposes. The Senate failed to override the veto, by a vote of 58–40 on March 6, 1974.

tion. Second, the Administrator of the FEA must be authorized and directed to implement a policy which will result in more effective use of our Nation's coal resources. Third, carefully limited adjustments must be made to certain specified environmental requirements. These adjustments, however, are not intended to abrogate or signal the abandonment of the committee's, the House's, the Congress' or the Nation's basic commitment to protection and enhancement of the public health, welfare, and the environment.

Particular mention of the need for comprehensive energy reporting should be made.

In a report completed on February 6, 1974, the General Accounting Office identified 45 bureaus, offices, divisions or administrations of 17 different agencies which are significant collectors or users of energy data. A spot audit showed that in the spring of last year fifteen major Federal agencies were circulating 145 energy-related questionnaires to the States and the private sector. Despite this effort, significant deficiencies exist in the data available to Federal decisionmakers.

In general, Federal agencies have developed individualized systems for data collection and analysis. Informational needs have been tailored to meet the particular task of an agency. Often, the data collected cannot be used for other purposes. Moreover, these agencies typically rely on private industry for their information; the data obtained is unverified and the collection process itself is not monitored. Consequently, as Members have repeatedly found over the course of this last year, information on reserves, supplies, and profits is incomplete and frequently inconsistent.

Without exception, all parties within and without government agree that the present system is inadequate. As former Administrator William E. Simon has testified "Today, and in the years ahead, we need better data on every aspect of energy—reserves, refinery operation, inventories, and production costs. We need data that we can check, verify, and crosscheck . . ." The legislation which the Committee reports today contains the fundamental powers necessary to acquire and develop for the Executive, the Congress, and the public timely, verifiable information whose absence in the past has so confused debate of energy policy issues and divided the American people.

Under the terms of this bill, the Administrator of the Federal Energy Administration is both authorized *and directed* to develop a full and accurate measure of domestic reserves and production, imports and inventories of basic fossil fuels (petroleum products, natural gas, and coal). This information is required to be assembled within 30 days of enactment and kept timely through periodic reporting requirements. To gain the essential perspective that comprehensive data can provide, the Administrator is also given authority to gather together all relevant energy information. Here the Administrator is equipped with the broadest of powers to reach into any sector of the economy to bring together information relevant to his task.

The Committee wishes to emphasize two important points with respect to this grant of authority. First, it should be noted that the authority under this legislation is temporary in nature and will expire on June 30, 1975. This does not represent a decision by the Committee that our informational needs will not stretch beyond that point in

time. On the contrary, the Committee is convinced that these needs will be with us for many, many years. The Committee is aware of efforts to develop within the government a centralized energy data organization to serve both the needs of the Executive and the Congress in the development of energy policy. Those efforts should continue. But we should not fail to respond to the immediate needs of the short-term situation awaiting the final resolution of the issues which attend the formation of a centralized data system. Secondly, the Committee wishes to emphasize that in reporting the energy information authorities contained in this bill, the Committee does not intend to reflect or imply disagreement with the energy information gathering powers which have been made a part of the legislation emanating from the House and Senate Committees on Government Operations dealing with the creation of a permanent Federal Energy Administration. The text of the conference agreement on that legislation (H.R. 11793) was not available to the Committee at the time of its deliberations. The Committee recognizes, therefore, that amendments to the energy information reporting section of this bill may be necessary to rationalize this section with provisions of H.R. 11793.

Explanation of Section-by-Section Amendments

The committee has reported a committee amendment in the nature of a substitute for the text of the introduced bill (H.R. 14368). The committee amendment is substantially identical to the introduced bill, except that a direction to the Secretary of Transportation to conduct a study of west coast rail passenger service was deleted, and a requirement to conduct public hearings before imposing certain transportation controls was added. The committee amendment also contains several technical and conforming changes. An explanation of the committee amendment on a section-by-section basis follows:

Sec. 1. Short Title Purpose

This section provides that the bill may be cited as the "Energy Supply and Environmental Coordination Act of 1974."

The section also sets forth the purpose of the bill: to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and enhance the environment, and to provide requirements for reports respecting energy resources.

Sec. 2. Suspension Authority

This section, as well as sections 3–9, is nearly identical to title II of S. 2589, as reported by the conferees on February 7, 1974 (see H. Report No. 93–793), but which was vetoed by the President.

There are two respects in which this section has been changed from section 201 of S. 2589. First, in light of the time which has passed since original consideration of energy emergency legislation, the date November 1, 1974, which appeared in Section 201 of S. 2589, has been changed in all instances to the earlier of June 30, 1974, or one year after date of enactment of this bill.

Second, the provisions applicable to sources which began conversion to coal voluntarily in the 90-day period prior to December 15, 1973, have been extended to cover any source which began such conversion after September 15, 1973, and before date of enactment of this bill.

In all other respects this section is identical to section 201 of S. 2589:

The bill provides for short term suspension of stationary source fuel or emission limitations but, with one exception, does not authorize long-term delay of such limitations. The bill adds a new section 119 to the Clean Air Act which will permit the Administrator of the Environmental Protection Agency to suspend until June 30, 1975 or one year after date of enactment (whichever comes first), any stationary source fuel or emission limitation. A suspension may be granted by the Administrator either upon his own motion or upon the application of a source or a State, if the source cannot comply with such limitations because of the unavailability of fuel. The Administrator of the Environmental Protection Agency is directed to give prior notice to the Governor of the State and the chief executive of the local government unit where the source is located. He is also directed to give notice to the public and to allow for the expression of views on the suspension prior to granting it unless he finds that good cause exists for not providing such opportunity. Judicial review of such suspension would be restricted to certain specified grounds.

The Administrator is required to condition the granting of any suspension upon adoption of any interim requirements that he determines are reasonable and practicable. These interim requirements must include necessary reporting requirements, and a provision that the suspension would be inapplicable during any period when clean fuels were available to such source. The Administrator would be required to determine when such fuels were in fact available. It is the intent of committee that the Administrator in making such determination take into consideration the costs associated with any changes that would be required to be made by the source to enable it to utilize such fuel. No source which has converted to coal and to which section 119(b) applies, however, could be required under this provision to return to the use of oil or natural gas.

The suspension would also be conditioned on adoption of such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to the health of persons. This would authorize not only requirements that a facility shut down during air pollution emergencies, but also (for example) a requirement that it keep a reserve supply of clean fuels on hand to be burned to avoid such emergencies.

The purpose of the short term suspension provision is to enable sources to continue operation during the immediate fuel shortage while at the same time limiting as much as possible the impact on air quality.

In recognition of the need to balance energy needs with environmental requirements and the unique problems facing any source which converts to coal in response to the emergency, the committee adopted a provision which provides that no air pollution requirement (as defined in section 119(b)(3)) could have the effect of prohibiting any such source from burning coal, except as provided in section 119(b)(1)(D). The bill would prohibit the application of such requirements

to sources which are either ordered to convert to coal or which began to convert to coal during the period beginning September 15, 1973, and ending on date of enactment of this bill. This prohibition against application of such requirements to such source could in some instances continue until as late as January 1, 1979. The prohibition would only apply if the source were placed, after notice and opportunity for oral presentation of views, on a schedule approved by the Administrator of the Environmental Protection Agency. The schedule must provide a time-table for compliance with the fuel or emission limitations of the applicable implementation plan no later than January 1, 1979.

In two States—Ohio and Kentucky—however, there is no applicable implementation plan in effect. This is so because of the Sixth Circuit Court of Appeals' opinion and order in *Buckeye Power, Inc.* v. *Environmental Protection Agency*, No. 72–1628 (6th Circ. 1973) and consolidated cases. The committee does not intend to preclude sources located in Ohio or Kentucky from eligibility for the exemption provided in section 119(b)(1). Therefore, the language of section 119(b)(2)(B) would permit the Administrator to approve a plan for a source located in either of these states if the plan provides a compliance schedule to achieve "the most stringent degree of emission reduction that such source would have been required to achieve . . . under the first applicable implementation plan which takes effect after" the date of enactment.

All compliance schedules under section 119(b) must also provide for compliance with interim requirements that will assure that the source will not materially contribute to a significant risk to public health.

The committee wishes to emphasize that the Administrator would not be authorized to approve a plan under section 119(b) for a utility generally. Rather, each plan approval must be for a specific plant. Moreover, before ordering the source to convert under section 10 of this Act, the Federal Energy Administrator would be expected to make a careful, case-by-case balancing analysis of the energy need and environmental harm which might result from such an order. The same type analysis must be made by the FEA Administrator prior to permitting a source which began conversion to coal in the period from September 15, 1973, to date of enactment, to continue to burn coal under a section 119(b) exemption. The FEA Administrator in making such an analysis is expected to consult and cooperate with the Administrator of EPA.

There are three basic reasons for the committee's decision to encourage increased burning of coal until at least 1979. First, in order to encourage the opening of new coal mines to increase energy supplies, it is necessary to encourage an on-going substantial demand for such coal. Without reasonable likelihood that new coal mines will be able to market their new production, the opening of new mines and expansion of existing mine capacity may be regarded too risky. Second, to the extent that electric generating power plants can be encouraged to cease burning oil and natural gas, these fuels would be available to meet other energy needs, such as production of gasoline and home

heating oil. Finally, since continuous emission reduction technology is available for major sources such as power plants, but is not available for sources such as homes, apartment houses, and small businesses, the purpose of the Clean Air Act can be better effectuated by having low pollution oil and natural gas burned to the maximum extent feasible, in sources for which no effective clean-up technology is available.

The committee believes that the priority effort of each source which is subject to section 119(b) should be to obtain low sulfur coal. If an adequate, long-term supply of low sulfur coal is available to such a source, the Administrator should only approve a plan which requires its use (and thus compliance with air pollution requirements) as expeditiously as practicable. In such a case, the Administrator would have to disapprove a plan which proposed to wait until January 1, 1979, before beginning to burn low sulfur coal. The committee believes that requiring priority consideration to the use of non-metallurgical low sulfur coal will reduce the likelihood of extended violation of applicable emission standards.

If a source is unable to obtain an adequate, long-term supply of low sulfur coal, it may seek to come into compliance by use of a continuous emission reduction system or by use of coal byproducts which would achieve the required degree of emission reduction. In such case, the source would still be required to act expeditiously to obtain an adequate supply of coal. However, compliance with all air pollution requirements would be required on a date established by the Administrator in the case of a source which will require a continuous emission reduction system for sulfur-related emissions, or as soon as practicable in the case of any other source; but in any case not later than January 1, 1979.

The Administrator would be required to impose, but would not be limited to imposing, the following requirements in any compliance schedule:

(1) the dates by which the source will solicit bids and enter into binding contractual agreements (or other equally binding commitment) for the procurement of an adequate coal supply to permit continued long term operation of the source;

(2) where the coal obtained by the source has sulfur content or other characteristics which will require installation of continuous emission reduction equipment to enable the source to comply with emission limitations, the dates for soliciting bids for such equipment, contracting for such equipment, and installation and start-up of such equipment by a date that will permit a reasonable time for necessary adjustments of the equipment to maximize the reliability and efficiency of the system prior to January 1, 1979; and

(3) reasonable interim measures which the source should employ to minimize the adverse impact on air quality.

In establishing dates for contracting for coal, the Administrator should determine the earliest date that is reasonable and which will permit compliance by the time specified in this section. Because the dates for obtaining coal or continuous emission reduction systems may occur at approximately the same time for more than one source which

may over burden supplies, the Administrator is specifically authorized to establish differing dates for obtaining coal or such systems to insure availability of supplies of such coal or equipment. In making such decisions, it is expected that the Administrator will provide the earliest date for those sources in areas with the most serious pollution problems.

It is the intent of the committee that when the coal available to the source necessitates the use of continuous emission reduction equipment for control of sulfur-related emissions, the source will have as much time as necessary to install the equipment and achieve timely compliance, in order to permit the orderly development of technology.

In recognition of the complex factors involved in determining schedules for the various sources, the committee intends that the Administrator have broad discretion in prescribing and approving schedules of compliance to insure that sources meet the requirements of this section without overburdening production capacity for continuous emission reduction systems for sulfur control or causing unacceptable disruption in energy production capacity.

The committee does not intend to permit delay of existing compliance schedules for control of particulate emissions. Some slight delay may be necessary in light of revised compliance schedules for control of sulfur-related emissions. However, only such minor adjustments as the Administrator determines to be unavoidable should be permitted in existing compliance schedules and emission limitations for control of particulates.

The provision relating to conversions under section 119(b) does not apply to fuel burning stationary sources which would propose to reconvert to oil or natural gas before the earlier of June 30, 1975, or one year after date of enactment. Only fuel burning stationary sources which select coal, receive EPA approval and submit a new compliance schedule which will achieve applicable emission limitations no later than January 1, 1979, can take advantage of section 119(b) beyond that date. After that date, fuel burning stationary sources which choose to reconvert to oil or natural gas remain subject to compliance schedules which were applicable prior to the temporary suspension or exemption.

The bill does provide for two exceptions to the prohibition on enforcing air pollution requirements. The Administrator or a State or local governmental unit, may, after notice and opportunity for oral presentation of views, prohibit the use of coal if it is determined that such use will materially contribute to a significant risk to public health. The Administrator, or a State or local government unit, may also require that a source use a particular grade of coal or coal with particular pollutant characteristics if such coal is in fact available to such source.

The term "significant risk to public health" is used in several instances in section 119. The committee is aware that the Environmental Protection Agency, taking its lead from the Senate Public Works Committee report on section 303 of the Clean Air Amendments of 1970, has defined "imminent and substantial endangerment" by regulation as a significant risk to the health of persons and has specified levels for various pollutants which reflect its judgment as to where those risks

occur. The committee wishes to emphasize that the language which is used in section 119 is not used in the same sense as the EPA regulations. Rather, the language of the bill deals with risks to health which are less severe than those specified by the Agency's "endangerment" regulations. What is intended is that some violation of the national primary ambient air quality standards may be permitted so long as any of the public would not be exposed to significant health risks.

The bill makes explicit that the period of inapplicability under section 119(b) of State implementation plan requirements may be extended for one year under the procedures of section 110(f) of the Clean Air Act. It is the intent of the committee, however, that the requirements of that section be clearly satisfied before any one year suspension is granted; the committee believes that requiring compliance by 1979 should permit adequate time for all sources to achieve compliance.

The bill thus requires these converting sources to come into compliance with all plan requirements by 1979 (or 1980, if a postponement is obtained under section 110(f)) in accordance with a schedule which meets requirements of regulations of EPA. These requirements would require incremental steps toward compliance by utilization of low sulfur coal or coal derivatives, or by continuous emission reduction systems to permit the combustion of high sulfur coal (or coal with high ash content) in compliance with such plan requirements.

The opportunity to continue to burn coal until January 1, 1979, would extend to sources which began converting to coal use at any time between September 15, 1973, and date of enactment. In order to be eligible for the exemption of section 119(b)(1), the source must do more than merely create a contingency capability to burn coal. Rather, the source must have made a firm determination to cease burning oil or natural gas and to burn coal instead. Moreover, the source must carry out this determination expeditiously and in good faith. Thus, the mere solicitation of bids for a coal supply would not necessarily in and of itself constitute action to begin conversion to the use of coal. This provision would permit the Administrator of the Environmental Protection Agency to exercise his discretion in deciding whether any particular source "began conversion to the use of coal" within the meaning of section 119(b)(1).

The committee intends that all limitation of State and local authority which is contained in section 119(b) would cease to be effective on January 1, 1979.

The bill includes a provision which authorizes the Administrator of the Environmental Protection Agency to allocate continuous emission reduction systems among users where supplies fall short of demand. This provision stipulates, however, that such allocation authority shall not impair the obligation of any contract entered into prior to the enactment of this section.

This section also includes provisions which require the Administrator of the Environmental Protection Agency to report to Congress on the impact of fuel shortages on the Clean Air Act programs as well as other factors, including the availability of continuous emission control equipment. The Administrator would also have to publish periodic reports on compliance with requirements imposed as part of any suspension or coal conversion, and other information on the impact

of the section. The bill also makes the violation of any requirement imposed as part of the new section 119 subject to enforcement under section 113 of the Act. Finally, the bill provides for preemption of any State or local government from enforcing a fuel or emission limitation against a source granted a suspension under the section. Such preemption does not apply with respect to requirements which are identical to Federal interim requirements.

New section 119 of the Clean Air Act also authorizes a one year postponement of applicable plan requirements for certain power plants. To be eligible, the power plant must be on a schedule to cease operations by January 1, 1980. The Federal Power Commission must also determine that the facility will in good faith carry out such plan.

To obtain the one year postponement of an emission limitation which is part of a State implementation plan, the Governor of the State must concur in the application to the Administrator of the Environmental Protection Agency. The Administrator shall consider the risk to the public health and welfare and may only grant the postponement if he determines that compliance is not reasonable in light of the projected useful life of the plant and availability of rate increases, as well as other factors. He may prescribe such interim requirements as may be reasonable. It is intended that this bill only address the immediate energy problem and the committee does not intend for any electric generating facility to be shut down in the near future because of the infeasibility of employing required emission control measures due to the age of the facility. The Congress intends to review the long term energy problems and environmental needs during the remainder of this session and will consider such relief as may be justified to alleviate the problems presented to facilities, including power plants, which are scheduled to be phased out.

New section 119 also authorizes the Administrator of EPA, after consultation with the FEA Administrator, to designate persons to whom fuel exchange orders should be issued to enhance protection of public health and welfare. It further requires the FEA Administrator to issue such orders within 45 days after the date of EPA's designation, unless the FEA Administrator finds that the economic or energy costs of such exchange will be excessive.

In order to assure the Administrator of the Environmental Protection Agency an adequate supply of information on the types, amounts, price, pollution characteristics and allocation of available fuels, it is expected that he will have access to all data available to the Administrator of the Federal Energy Administration.

Such information will assist in effective and timely performance of the Administrator of EPA's function under this Act.

The committee expects that both the FEA and EPA Administrators will facilitate interagency cooperation and information exchange. EPA is expected to establish a permanent liaison in the office of the FEA Administrator for the duration of the energy shortage situation and the FEA Administrator is expected to do the same at EPA. This may reduce the confusion which can otherwise be expected to result from those decisions each agency is required to make under statutory authorization.

SEC. 3. IMPLEMENTATION PLAN REVISIONS

The only change made by the committee in this section of the bill from section 202 of S. 2589, as reported by the conferees, is the addition of a requirement that at least one public hearing be conducted in the affected area prior to promulgation by the Administrator of any requirement relating to management of parking supply or preferential bus/carpool lanes.

In all other respects this section is identical to section 202 of S. 2589:

This section provides that the Administrator will only review those plans for regions in which coal conversion under section 119(b) of the Clean Air Act may result in a failure to achieve a primary ambient air quality standard on schedule. The bill directs the Administrator to order necessary plan revisions within one year after such conversion that would set forth any additional reasonable and practicable measures required to achieve ambient air quality standards. The plan revision would have to consider whether, despite the coal conversions, the primary ambient standards could be achieved through the use of additional reasonable and practicable measures (which may include energy conservation measures) that were not included in the original plan. In allowing up to a year for the Administrator of the Environmental Protection Agency to act, it is the intent of the committee to permit both the Administrator and the States sufficient leadtime to develop adequate information on the impact of coal conversions, both effected and anticipated, and to permit accurate assessment of the additional measures required for State implementation plans.

The committee expects that revisions under this section will be required only after careful consideration of a number of factors to assure that existing sources which do not convert will not be subject to new requirements where such requirements are unreasonable or impractical. In determining reasonableness and practicability, the Administrator shall consider whether the source is presently subject to requirements, is on schedule and has expended or is expending funds to comply. In this event, no requirement shall be imposed under this section which will require unreasonable additional expenditures. However, where reasonable measures can be imposed, without penalizing sources which are in compliance or are in the process of complying with the law, the Administrator shall impose such requirements.

Section 3 of the bill amends section 110 of the Clean Air Act to include a provision that parking surcharges must receive the explicit authorization by Congress by law before they may legally be imposed by the Environmental Protection Agency. The bill would, however, continue to permit preferential bus/carpool lanes to be implemented by the Environmental Protection Agency as set forth in current transportation control plans. In implementing requirements for bus/carpool lanes, the basic responsibility rests with State and local governments and transportation agencies, and local hearings should be considered for specific proposals.

The committee notes that the Public Health and Environment Subcommittee will be reviewing the issues involved in transportation

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controls in hearings during the remainder of this session. The study mandated by this bill of the necessity and impact of these specific transportation controls will be useful to the subcommittee in its inquiry.

In addition, the committee directs the Administrator of the Environmental Protection Agency to review all the transportation controls which have been promulgated or proposed as to their efficacy and practicability, and to provide the appropriate committees with the results of that review in connection with hearings during 1974.

The bill would also empower the Administrator of the Environmental Protection Agency to suspend for one year the review of new parking facilities. Although the Agency has already promulgated regulations suspending such activity, the committee wishes to reemphasize its continued support for a moratorium on EPA's parking management regulations until January 1, 1975.

Although the committee does not believe that regulations on the management of parking supply should be made subject to prior congressional approval, the committee has concluded that a period for refining the criteria which will be used in the review of such facilities and establishing the administrative machinery to review them should be permitted before the program is placed in operation. The bill provides that, upon exercise of the suspension authority, no parking facility on which construction is initiated before January 1, 1975, would be subject to review for its impact on air quality as a result of any Environmental Protection Agency regulations on the management of parking supply.

In adopting these provisions, the committee does not intend to question either the need for, or the authority of the Administrator of the Environmental Protection Agency to impose, transportation control plans.

This section, like section 203 of S. 2589, amends section 202 of the Clean Air Act to continue the emission standards established by the Administrator for 1975 model year automobiles during the 1976 model year. The effect of this provision is to maintain in the 1976 model year a Federal 49-State standard of 1.5 grams per mile of hydrocarbons, 15.0 grams per mile of carbon monoxide and 3.1 grams per mile of oxides of nitrogen, and a standard for California of 0.9 gram per mile of hydrocarbons, 9.0 grams per mile of carbon monoxide, and 2.0 grams per mile of oxides of nitrogen. These standards apply to automobiles produced by all manufacturers, whether or not any individual manufacturer had applied for or received a suspension under section 202(b)(5) previous to the enactment of this section.

The bill provides that after January 1, 1975, an automobile manufacturer may seek a single one-year suspension of the statutory standards for hydrocarbons and carbon monoxide applicable to the 1977 model year. The Administrator would be required to establish interim emission standards for 1977 model automobiles for hydrocarbons and carbon monoxide if he grants the suspension.

In authorizing the suspension for the 1977 model year, the conferees point out that one of the considerations advanced by Judge Levanthall in remaining EPA's decision not to authorize a suspension of the 1975 standards for one year was that adverse fuel economy would

deter consumer purchasing of new automobiles, resulting in greater retention of old automobiles with inefficient pollution control devices. As Judge Levanthall pointed out, this might lead to a situation whereby denial of a suspension would result in greater total actual emissions of all cars in use than would be the case if a suspension were authorized. See *International Harvester Company, et al.* v. *Ruckelshaus*, 478 F.2d 615, 633–634 (February 20, 1973). If the Administrator is asked to authorize a suspension for HC and CO for model year 1977, and if the country is experiencing an energy crisis at the time a suspension is requested, the committee would expect the Administrator to weight carefully whether the application of the statutory standard would result in significant increase in fuel consumption.

The conference substitute amends section 202(b)(1)(B) of the Clean Air Act to establish a maximum emission standard for oxides of nitrogen of 2.0 grams per mile applicable nationwide to 1977 model year automobiles. This defers the previous statutory standard of 0.4 grams per mile of oxides of nitrogen until the 1978 model year. No administrative suspensions would be possible from either the 1977 or 1978 standard. While the 1977 model years standard is a maximum of 2.0 grams per mile nationwide, California retains the right under section 209 of the Clean Air Act to seek a waiver for a more stringent standard.

The committee is concerned with what may be unwarranted or, at least, untimely changes in EPA's certification test procedures for new automobile emissions. It is intended that uncertainty as to requirements for compliance with such standards be minimized. Any changes in test procedures shall be kept to an absolute minimum and should occur only where such changes improve instrumentation, reduce cost of testing or improve the reliability and validity of the test results.

SEC. 5 CONFORMING AMENDMENTS

This section contains conforming amendments which are identical to those which were contained in section 204 of S. 2589, as reported by the conferees.

SEC. 6. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT

This section contains provisions pertaining to studies, fuel allocation, and the filing of environmental impact statements which are identical to those which we contained in section 205 of S. 589, as reported by the conferees.

SEC. 7. ENERGY CONSERVATION STUDY

This section contains provisions relating to various energy conservation studies, which in all respects except one, are identical to those which were contained in section 206 of S. 2589, as reported by the conferees.

The committee voted to delete subsection (d) of that section (pertaining to the Tijuana-Vancouver high-speed ground transportation system study). In doing so, the Committee did not intend to express

any opposition to such a study or system. Rather, the committee deleted the provision because it felt that such a study could not be completed within the time frame of the provision as introduced or within the period of existence of this Act. In addition, it was the committee's belief that additional matters such as consultation with State and local agencies, additional criteria for the study and appropriate time frame and sufficient authorization of funding should be the subject of hearings by an appropriate subcommittee of the House Interstate and Foreign Commerce Committee.

SEC. 8. REPORTS

This section provides for a report by the EPA Administrator on the implementation of sections 2 through 7, a provision which is substantially similar to that contained in section 207 of S. 2589, as reported by the conferees.

SEC. 9. FUEL ECONOMY STUDY

This section provides for EPA and the Department of Transportation to conduct a joint study on the feasibility of establishing a 20 percent fuel economy improvement standard for 1980 and later model new motor vehicles. This provision is identical to that which was contained in section 209 of S. 2589, as reported:

The purpose of the jointly conducted study is to eliminate duplication with current, ongoing fuel economy studies.

The committee expects, of course, that any current DOT studies will be coordinated with this study to eliminate any potential duplication and minimize waste of funds.

At the same time, the committee agrees that EPA must be actively involved in any fuel economy analysis to assure consistency between the findings of the study and the statutory requirements for automobile emission reductions.

The committee recognizes that DOT has an equally important safety responsibility but does not have either established test procedures, testing facilities or the expertise on engine technology to perform an independent review.

The committee expects this study to utilize EPA's established emission test procedures in order to avoid inconsistency in any subsequent legislation recommendation.

SEC. 10. COAL CONVERSION AND ALLOCATION

This section is identical in almost all respects to section 105 of S. 2589, as reported by the conferees. The term "byproducts" has been changed to "derivatives". This change does not reflect a change in policy; rather the change was made to more clearly express the committee's intent to refer to "oil", "gas", or other fuels derived from coal.

In all other respects, this section is identical to section 106 of S. 2589:

Section 10 provides that the Administrator of FEA shall, to the extent practicable and consistent with the objectives of this Act, by order, after balancing on a plant-by-plant basis the environmental effects of use of coal against the need to fulfill the purposes of this

legislation, prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this legislation, has the capability and necessary plant equipment to burn coal. Any installation to which such an order applies is permitted to continue to use coal and coal derivatives as provided in section 119(b) of the Clean Air Act. To the extent coal supplies are limited to less than the aggregate amount of coal supplies which may be necessary to satisfy the requirements of those installations which can be expected to use coal (including installations to which orders may apply under this subsection), the Administrator of FEA shall prohibit the use of natural gas and petroleum products for those installations where the use of coal will have the least adverse environmental impact. A prohibition on use of natural gas and petroleum products hereunder is contingent upon the availability of coal, coal transportation facilities, and the maintenance of reliability of service in a given service area. Assessment of the availability of coal would take into consideration the physical and economic feasibility of its production, transportation to the powerplant, and of any State laws or policies limiting its extraction or use.

The Administrator of FEA must require that fossil-fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable of using coal as a primary energy source instead of or in addition to other fossil fuels. No fossil-fuel-fired electric powerplant is required to be so designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) if an adequate and reliable supply of coal is not available and is not expected to be available. In considering whether to impose a design or construction requirement, the Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

The FEA Administrator is authorized by rule to prescribe a system for allocation of coal to users thereof in order to attain the objectives specified in this section.

The committee believes that, in the reasoned administration of this authority to order certain plants to cease burning oil or natural gas, the Administrator should balance all relevant factors, including energy needs of the economy, public health and safety, environmental effects of fuel use, available facilities, adequacy and reliability of electric power supply, among others. He should consult with all affected departments and agencies of government, including the Federal Power Commission in order to obtain the findings and recommendations of that agency covering matters within its administrative jurisdiction and expertise. The committee contemplates that the physical conversion of electric generating facilities from petroleum or natural gas firing to coal firing will have implications respecting adequacy and reliability of bulk power supply, matters wth the FPC's jurisdiction under the Federal Power Act, 16 U.S.C. 791(a) *et seq.*

The committee hearings indicate that in coastal and other regions of the Nation, the conversion of the major or large petroleum and natural gas fired fuel burning installations would assist materially in meeting the current demands upon natural gas and petroleum resources. As respects electric power plants, themselves a major user of petroleum and natural gas resources for boiler fuel purposes, the testimony shows the principal fuel burning plants likely to be affected by this section will be those electric power plants which once burned coal, but which have been converted to oil fuel in recent years to meet more stringent air pollution requirements, and which still retain the necessary coal handling facilities and appurtenance both inside and outside the plant, including necessary land for storage of coal. These include equipment such as unloaders, conveyors, pulverizers, scales, burners, soot blowers and special coal-burning instrumentation and controls. The latter are necessary not only to maintain dependable operation but to assure operational safety, since coal firing is often a much less stable operation than that obtainable with oil or gas. It is not intended, however, to imply that the absence of any one or combination of these facilities would be grounds for concluding that the facility lacked capability or necessary plant equipment to convert to coal firing.

As shown in the committee hearings, electric utilities have reported that within three weeks from the time conversion is started, approximately 13,000 megawatts of capacity normally burning oil or gas fuel could be converted to coal, with an indicated reduction in residual oil demand of about 105 million barrels per year or an average of 288,000 barrels per day. The required increase in coal consumption would be about 26 million tons per year.

The Federal Power Commission reported that there is a potential for an additional 75 million barrels of oil per year saving by reconverting units which require re-establishment of major coal facilities and which could require up to a year or more for complete conversion. With all conversions completed, the annual savings in residual oil for electricity generation would be about 180 million barrels per year or almost 500 thousand barrels per day. The associated increase in coal consumption would be about 45 million tons per year, as compared to the present total production of coal of about 600 million tons per year.

SEC. 11. ENERGY INFORMATION REPORTS

This section is drawn from section 124 of S. 2589, as reported by the conferees, but was modified substantially in the following respects:

This section authorizes and directs the Administrator of the Federal Energy Administration to assemble reliable energy information. The Administrator is granted the power to require, by rule, the submission of reports by persons who are engaged in the production, processing, refining, transportation by pipeline, or distribution (other than at the retail level) of energy resources. To augment this rulemaking authority, the Administrator may sign and issue subpoenas to compel the attendance in testimony of witnesses and the production of relevant books, records, papers and other documents, and to require by special or general orders answers in writing to interrogatories, request for reports, or other information. The authority to issue subpoenas and

general or special orders runs to any "person" who possesses "energy information". These terms are given very broad meanings in order to assure that the Administrator has access to any relevant data.

The Administrator is given two specific authorities to assist in the verification of energy data. First, he is permitted to require that information called for by general or special orders be submitted under oath. Also, the Administrator is given general authority to administer oaths and to conduct on-site inspections, to inventory and sample any stock of energy resources, and to examine and copy records, reports, and documents relating to energy information. The Committee expects this authority to be used. One of the major shortcomings in the current system, is the reliance of federal agencies on unverified information. As long as the reporting of significant information by industry is voluntary and unverified, credibility questions will be raised even though the data may be entirely valid. Most certainly the present inability of government to demonstrate convincingly the nature and extent of the shortage of energy producing resources is due, in large part, to the unavailability of independently verified data.

As has been widely noted by critics of the current energy collection system, Federal regulatory agencies tend to develop individualized systems for energy data collection and typically rely upon the industries they regulate for information. This is true even of those agencies which have been given the authority to mandate the submission of data. To assure that the compulsory reporting authority contained in this bill is not similarly allowed to lie dormant, the Administrator is directed to promptly promulgate rules under the authority contained in subsection (b) (1) to require periodic reports at least every ninety days to assure the timeliness and accuracy of information necessary to the formulation of energy policy. Moreover, the Administrator is directed to use his full information gathering authorities, including the use of subpoenas and general or special orders, to develop within thirty days after enactment of this Act as full and accurate a measure as is reasonably practicable of domestic reserves, production, imports, and inventories of petroleum products, natural gas, and coal. This information would be available, without qualification, to the Congress or any committee thereof upon request of the committee's chairman. Public access to this data is governed by the terms of the Freedom of Information Act.

To assure that the public is kept informed on a routine basis, the Administrator is required to publish quarterly reports containing specific and detailed information pertaining to supplies of petroleum products, natural gas, and coal. It is the Committee's intention that the need to make periodic reports will assure the continued quality and timeliness of the data required to be obtained under this section.

SEC. 12. DEFINITION

This section defines the term "Federal Energy Administrator" for purposes of the bill and the Clean Air Act. That term refers to the Administrator of the Federal Energy Administration, which will be established by the Federal Energy Administration Act of 1974. Until that Administrator takes office, this section provides that the term will refer to an officer of the United States designated by he President.

Cost Estimates

In accordance with section 252(A) of the Legislative Reorganization Act of 1970 (Public Law 91-150, 91st Congress), the committee provides the following estimate of cost:

Fiscal year:	Millions
1974	$5
1975	35
1976	5
1977	5
1978	5

Except for the administrative functions of the Environmental Protection Agency, authorities under this Act expire on June 30, 1975.

Agency Reports

Following normal procedure, the committee requested agency views on the bills, H.R. 13834 and H.R. 14368. No agency comments have been received in response to that request.

Members may, however, find some portions of the following material submitted by Administrator Russell E. Train in connection with the proposed "Clean Air Act Amendments of 1974" to be pertinent to some of the provisions of H.R. 14368:

U.S. Environmental Protection Agency,
Office of the Administrator,
Washington, D.C., March 22, 1974.

Hon. Carl T. Albert,
Speaker of the House of Representatives,
Washington, D.C.

Dear Mr. Speaker: I am pleased to forward to you a proposed bill, "The Clean Air Act Amendments of 1974", which is designed to improve the Federal-State program to achieve clean air.

Air pollution directly affects all of our citizens because of the adverse effects on their health and welfare and because of the increased costs they pay for goods and services. The Clean Air Act Amendments of 1970 have established a strong and effective program to protect the American public from the adverse health effects as well as other effects of air pollution. Under the 1970 law EPA has established air quality standards to protect health and welfare. The States have adopted and are implementing detailed programs to ensure compliance with the standards. The automobile industry has made significant progress in reducing motor vehicle emissions. States and localities are developing transportation control strategies that will not only help achieve higher air quality, but also reduce congestion and provide more balanced transportation systems. These are only illustrative of the major progress that the law has stimulated.

Now, with more than three years of experience, we are in a position to suggest some specific areas in which the law needs to be strengthened or made more workable. The amendments which we are suggesting are intended to improve upon the basic thrust of the Act and to take into account new realities, particularly the energy problems which the Nation faces. They are also intended to deal realistically, but with

continued firm commitment, with specific problems of inability to achieve the statutory deadlines for the ambient air quality standards in severe problem areas such as Los Angeles.

The cornerstone of the Clean Air Act is the establishment of Air Quality Standards designed to protect the Nation's health and welfare and development by the States of implementation plans to insure attainment of those standards by designated statutory deadlines.

We are suggesting three changes dealing with the statutory deadlines for air quality standards: first, to provide greater flexibility in dealing with transportation controls for those areas heavily impacted by motor vehicle pollution; second, to provide for EPA review of State implementation plans in order to encourage the use of clean fuels in geographic areas of most need; and third, when necessary, to temporarily extend compliance dates for certain stationary source fuel limitations.

To date, transportation controls have been proposed for 38 metropolitan areas. Many of these communities can achieve the national photochemical oxidant and carbon monoxide ambient air quality standards by mid-1977 through the application of new motor vehicle emission standards, stringent stationary source standards and in some cases, additional control efforts, such as institution of inspection and maintenance programs and greater use of mass transit and car pools. A number of communities, however, are so heavily impacted by motor vehicle-related pollutants that severe gasoline rationing would be necessary to achieve air quality standards within the statutory deadline, even after all other control measures were instituted.

We are proposing that for those communities where attainment of standards by 1977 would cause serious economic and social disruption, EPA be authorized to allow up to five additional years for compliance with the air quality standards. EPA would grant this extra time only if all reasonable control measures under existing plans have been or will be instituted. EPA would be authorized to provide a further five-year extension in those cases where it would not be possible to achieve compliance within the first five years. Providing additional time in appropriate cases will enable communities to attain the flexibility they need to develop the long-term transportation system solutions necessary to help meet air quality standards.

In developing implementation plans for sulfur oxides control, many States did not assess the aggregate impact of their regulatory requirements on available fuel supplies nationwide. Our projections indicate that there will be a shortage of low-sulfur content fuels as well as stack gas scrubbing technology, to meet the deadline in the Clean Air Act as required in State implementation plans.

In addition, we are proposing authority to permit EPA to issue enforcement orders beyond the statutory deadlines in the Act. In cases where the extension must be given to sources that have failed to make good faith efforts, EPA would be required to seek criminal or civil sanctions.

We are proposing a review of State implementation plans to identify State emission regulations that require the use of lower sulfur fuel than is needed to meet the primary air quality standards. Based on this review, EPA could issue enforcement orders through the amendment

discussed above, to the extent necessary to eliminate the anticipated clean fuels deficit. This would complement EPA's current voluntary program of encouraging revisions of State implementation plans to ensure that limited clean fuel supplies are available where needed to meet health-related primary standards. Neither the current program nor the proposed amendment would infringe on the important principle that States have the prerogative to adopt and enforce more stringent controls if they choose to do so. Such revised schedules would ensure that the primary air quality standards would not be violated and that attainment of State and local standards will be achieved as soon as possible.

Enactment of this proposal would have the benefit of making scarce low-sulfur fuels and control hardware available first in urban areas where they are most needed, allowing for the allocation of low sulfur fuels and new technology in the most logical time sequence to meet our air quality objectives.

The Nation's energy supply problems have been exacerbated by greatly increasing demand which has resulted in dependence on foreign sources of crude oil. To reverse such dependence, it will be necessary for some oil burning power plants to convert to coal.

We are proposing both a short and long-term solution to deal with this problem. These proposals are similar to provisions contained in the recently vetoed Energy Emergency Act. One provision, virtually identical to that in the Energy Emergency Act, would provide authority for the President—through the Federal Energy Office—to mandate coal conversion. Accompanying this provision would be a limited exemption to the National Environmental Policy Act for such actions, which was also covered by the Energy Emergency Act. The exemptions would be for only one year and would require environmental analyses. The thrust of NEPA is protected since any long-term conversion would have to meet all the requirements of NEPA.

In cases where the Federal Energy Office has mandated coal conversion, the Administrator of EPA would have authority to temporarily suspend any emission standard or limitation in violation of primary air quality standards. Once the applicable deadline under the Clean Air Act is reached—either 1975 or 1977—the source would be required to achieve primary standards until June 20, 1980. At that time, the source would have to move beyond primary standards to the extent needed to achieve emission limitations in the original State implementation plan. The interim requirement to achieve primary standards is a departure from the provision in the Energy Emergency Act, which apparently would have allowed limited violations of the primary standard during the period between the implementation plan deadline and the final deadline for this authority.

Although EPA can establish Federal emission standards for new sources and also for sources emitting hazardous pollutants, there are occasions where emission limitations are not the most practical method of control. For example, emission standards are not appropriate in cases where emissions from a source are difficult to measure, such as hydrocarbon emissions from gasoline storage tanks, or in cases where application of a particular product may cause the problem, such as spraying asbestos. EPA is requesting authority to set design or equip-

ment standards for new sources and hazardous pollutants whenever the limitations of measurement technology make emission limitations impracticable. Hence, the use of this new authority would be the exception.

Because the entire risk of innovative technology is borne by the owner of a source, there is a tendency in new source performance standards to freeze current technology. In order to encourage development of new technology by the private sector, we are proposing in certain exceptional cases to waive Federal, State, and local emission requirements where a source would use a new control technology which we believe will either offer significantly greater control of emissions or the same level of emissions as the new source performance standards at substantially reduced cost. Demonstration projects of this type would only be allowed where maintenance of the health-related air quality standards would not be jeopardized.

Currently, EPA is constrained to the use of criminal penalties to enforce stationary source standards and limitations. We are proposing to expand our enforcement authorities to include civil penalties—up to $25,000 for each day of violation. Because a very vigorous enforcement program will likely be required to achieve the objectives of the Clean Air Act, it is important that we have flexibility in the application of sanctions. In many cases, the greater flexibility of civil penalties will be a much more effective mechanism to encourage compliance than criminal penalties; in other cases, criminal penalties will be more appropriate.

In his January 23, 1974, message to the Congress on measures to deal with the energy crisis, the President made his recommendations for extending auto emission standards. He stated this proposal would "permit auto manufacturers to concentrate greater attention on improving fuel economy while retaining a fixed target for lower emissions. These changes can be made without significant effect on our progress in improving air quality." The attached language would extend HC and CO standards at the 1975 interim level for 1976 and 1977 NO_x standards at 3.1 grams per mile for the same two years.

The final item of our proposed legislation would extend the authorizing authorities of the Clean Air Act for two additional years. Last year, the Congress extended the Act's authorizations to June 30, 1974, at the Fiscal Year 1973 levels of $475 million. We are proposing extending the Act for the next two fiscal years at the $475 million level. This amount should be sufficient to carry forward the Nation's air pollution control program.

These above amendments have been discussed intensively throughout the Executive Branch and I support their enactment. There are, however, two proposals set forth in Attachments B and C which I do not support. Nonetheless, other Executive Branch agencies believe they are needed and I am therefore forwarding them for consideration by the Congress. These proposals concern "intermittent control systems" and "significant deterioration."

In support of the proposal permitting indefinite use of intermittent or alternative control systems, other agencies state that: (1) such systems will allow some utilities and industrial sources to meet ambient air quality standards at a cost significantly lower than the cost of

continuous emission control systems and with a smaller energy penalty; (2) such systems involve less solid waste than some of the scrubber technologies; and (3) that use of such systems could encourage the coal industry to make greater investments in new mines. This proposal would permit the use of alternative or intermittent control measures indefinitely as long as they would meet national ambient air quality standards.

EPA's concern with intermittent control systems as a permanent control strategy rests heavily on information becoming increasingly available as to the effects on public health of the sulfates that are formed in the ambient air as a product of the sulfur oxide gaseous emissions. EPA studies indicate that measurable adverse health effects are present at ambient sulfate levels of 8–10 micrograms per cubic meter. These levels are exceeded in large parts of the country, particularly in the Midwest and Northeast. The permitting of uncontrolled emissions of sulfur dioxide except during periods of adverse meteorological conditions would be expected to contribute in a major way in ambient air sulfate loadings. In my opinion, therefore, amending the Act to encourage indefinite or intermittent control systems would be highly inappropriate, and could be more costly in the long run should new requirements to deal with sulfates force expensive retrofits.

Recent court interpretation of the Clean Air Act requires the Administrator of EPA to establish standards to prevent "significant deterioration" of air already cleaner than required by national ambient air quality standards designed to protect public health and welfare. In support of this proposal other agencies state that the effect of this interpretation is to extend the Federal regulatory authority beyond standards set to protect the public health and welfare and to establish a new criterion, namely the quality in a given area at the time the Act was passed. They feel that this extension of the Federal regulatory authority will limit the range of choice of State and local governments in economic development and land use matters to a degree deemed unnecessary and unwarranted. This proposal would remove the authority of the Federal government to promulgate standards more stringent than those set to protect public health or welfare, but would not remove the authority of State and local governments to establish and maintain air quality standards cleaner than required by the Federal government should they choose to do so.

As a result of extensive written comments, public hearings and interagency discussions, EPA believes that meaningful steps can be taken to protect areas with already high air quality through classification by the States of geographic areas into one of three general classes:

(1) Air quality area better than secondary standards in which only restricted growth would take place;

(2) Air quality area better than secondary standard but in which moderate growth would be permitted;

(3) Air quality level to be determined by secondary standards.

The final classification of areas into these categories would take place after public hearings. No hard emission or air quality increments would be promulgated by EPA as limiting factors. Since the

EPA regulation would not provide for firm maximum increments of pollution, it is expected that court challenges as to the adequacy of the EPA promulgation would take place.

Because of the potential for further litigation, the importance of this issue to our environmental and energy problems and the potential impact of EPA's regulations on State and local land use responsibilities. EPA believes that Congress should explore all alternatives for dealing with the significant deterioration issue in testimony and debate.

In closing, I would like to reiterate that significant progress has been made under the Clean Air Act. We look forward to early hearings and full Congressional debate on these proposals.

Sincerely yours,

RUSSELL E. TRAIN,
Administrator.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE CLEAN AIR ACT

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TITLE I—AIR POLLUTION PREVENTION AND CONTROL

* * * * * * *

IMPLEMENTATION PLANS

SEC. 110. (a)(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan for each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

(A)(i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e)) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality

standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transportation controls;

(C) it includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

(D) it includes a procedure, meeting the requirements of paragrap (4), for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

(E) it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region;

(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan, (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources, (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection; and (v) for authority comparable to that in section 303, and adequate contingency plans to implement such authority;

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards; and

(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standard; or (ii) whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements.

(3)(*A*) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

(*B*)(*1*) *For any air quality control region in which there has been a conversion to coal to which section 119(b) applies, the Administra-*

tor shall review the applicable implementation plan and no later than one year after the date of such conversion determine whether such plan must be revised in order to achieve the national primary ambient air quality standard which the plan implements. If the Administrator determines that any such plan is inadequate, he shall require that a plan revision be submitted by the State within three months after the date of notice to the State of such determination. Any plan revision which is submitted by the State after notice and public hearing shall be approved or disapproved by the Administrator, after public notice and opportunity for public hearing, but no later than three months after the date required for submission of the revised plan. If a plan provision (or portion thereof) is disapproved (or if a State fails to submit a plan revision), the Administrator shall, after public notice and opportunity for a public hearing, promulgate a revised plan (or portion thereof) not later than three months after the date required for approval or disapproval.

(2) Any requirement for a plan revision under paragraph (1) and any plan requirement promulgated by the Administrator under such paragraph shall include reasonable and practicable measures to minimize the effect on the public health of any conversion to which section 119(b) applies.

(4) The procedure referred to in paragraph (2)(D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate authority to prevent the construction or modification of any new source to which a standard of performance under section 111 will apply at any location which the State determines will prevent attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necessary to permit the State to make a determination under clause (A).

(b) The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed eighteen months from the date otherwise required for submission of such plan.

(c)(1) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

[(1)**]**(A) The State fails to submit an implementation plan for any national ambient air quality primary or secondary standard within the time prescribed,

[(2)**]**(B) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

[(3)**]**(C) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H).

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

(2)(A) *The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than three months after date of enactment of this section, on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.*

(B) *No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.*

(C) *The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.*

(D) *For purposes of this paragraph, the term "parking surcharge regulation" means a regulation imposing or requiring the imposition*

of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles. The term "management of parking supply" shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval issuance of which is to be conditioned on air quality considerations. The term "preferential bus/carpool lane" shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses and/or carpools.

(E) No standard, plan or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after the enactment of this paragraph by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, additional hearings shall be held in such area after such notice.

(d) For purposes of this Act, an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved under subsection (a) or promulgated under subsection (c) and which implements a national primary or secondary ambient air quality standard in a State

(e)(1) Upon application of a Governor of a State at the time of submission of any plan implementing a national ambient air quality primary standard, the Administrator may (subject to paragraph (2)) extend the three-year period referred to in subsection (a)(2)(A)(i) for not more than two years for an air quality control region if after review of such plan the Administrator determines that—

(A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period, and

(B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

(2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—

(A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in pragraph (1)(A) within the three-year period, and

(B) such interim measure of control of the sources (or classes) described in paragraph (1)(A) as the Administrator determines to be reasonable under the circumstances.

(f)(1) Prior to the date on which any stationary source or class of moving sources is required to comply with any requirement of an applicable implementation plan the Governor of the State to which such plan applies may apply to the Administrator to postpone the applica-

bility of such requirement to such source (or class) for not more than one year. If the Administrator determines that—

(A) good faith efforts have been made to comply with such requirement before such date,

(B) such source (or class) is unable to comply with such requirement because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time,

(C) any available alternative operating procedures and interim control measures have reduced or will reduce the impact of such source on public health, and

(D) the continued operation of such source is essential to national security or to the public health or welfare.

then the Administrator shall grant a postponement of such requirement.

(2)(A) Any determination under paragraph (1) shall (i) be made on the record after notice to interested persons and opportunity for hearing, (ii) be based upon a fair evaluation of the entire record at such hearing, and (iii) include a statement setting forth in detail the findings and conclusions upon which the determination is based.

(B) Any determination made pursuant to this paragraph shall be subject to judicial review by the United States court of appeals for the circuit which includes such State upon the filing in such court within 30 days from the date of such decision of a petition by any interested person praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Administrator and thereupon the Administrator shall certify and file in such court the record upon which the final decision complained of was issued, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm or set aside the determination complained of in whole or in part. The findings of the Administrator with respect to questions of fact (including each determination made under subparagraphs (A), (B), (C), and (D) of paragraph (1) shall be sustained if based upon a fair evaluation of the entire record at such hearing.

(C) Proceedings before the court under this paragraph shall take precedence over all the other causes of action on the docket and shall be assigned for hearing and decision at the earliest practicable date and expedited in every way.

(D) Section 307(a) (relating to subpenas) shall be applicable to any proceeding under this subsection.

* * * * * * *

FEDERAL ENFORCEMENT

SEC. 113. (a)(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends

beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b).

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as "period of Federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person—

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b).

(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 111(e) (relating to new source performance standards) [or], 112(c) (relating to standards for hazardous emissions), *or 119(f)* (*relating to energy-related authorities*) or is in violation of any requirement of section 114 (relating to inspections, etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b).

(4) An order issued under this subsection (other than an order relating to a violation of section 112) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

(b) The Administrator may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person—

(1) violates or fails or refuses to comply with any order issued under subsection (a); or

(2) violates any requirement of an applicable implementation plan (A) during any period of Federally assumed enforcement, or (B) more than 30 days after having been notified by the Administration under subsection (a)(1) that such person is violating such requirement; or

(3) violates section 111(e) [or 112(c)], *112(c)*, *or 119(f)*; or

(4) fails or refuses to comply with any requirement of section 114.

Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency.

(c) (1) Any person who knowingly—

(A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, or (ii) more than 30 days after having been notified by the Administration under subsection (a) (1) that such person is violating such requirement, or

(B) violates or fails or refuses to comply with any order issued by the Administrator under subsection (a), or

(C) violates section 111(e) [or section 112(c)], *section 112(c), or section 119(f)*

shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

INSPECTIONS, MONITORING, AND ENTRY

SEC. 114. (a) For the purpose (i) of developing or assisting in the development of any implementation plan under section 110 or 111(d), any standard of performance under section 111, or any emission standard under section 112(ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out section *119 or* 303—

(1) the Administrator may require the owner or operator of any emission source to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information, as he may reasonably require; and

(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon, or through any premises in which an emission source is located or in which any records required to be maintained under paragraph (1) of this section are located, and

(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which the owner or operator of such source is required to sample under paragraph (1).

(b)(1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section (except with respect to new sources owned or operated by the United States).

(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

(c) Any records, reports, or information obtained under subsection (a) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

ABATEMENT BY MEANS OF CONFERENCE PROCEDURE IN CERTAIN CASES

SEC. 115. (a) The pollution of the air in any State or States which endangers the health or welfare of any persons and which is covered by subsection (b) or (c) shall be subject to abatement as provided in this section.

(b)(1) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Administrator shall, if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

(2) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the

Administrator shall, if such request refers to alleged air pollution which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate and if a municipality affected by such air pollution, or the municipality in which such pollution originates, has secrets or secret processes and all information reported shall be considered confidential for the purposes of section 1905 of title 18 of the United States Code.

(2) If any person required to file any report under this subsection shall fail to do so within the time fixed by the Administrator for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where such person has his principal office or in any district in which he does business: *Provided*, That the Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection and he shall have authority to determine the facts upon all such applications.

(3) It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures.

(k) No order or judgment under this section, or settlement, compromise, or agreement respecting any action under this section (whether or not entered or made before the date of enactment of the Clean Air Amendments of 1970) shall relieve any person of any obligation to comply with any requirement of an applicable implementation plan, or with any standard prescribed under section 111 or 112.

RETENTION OF STATE AUTHORITY

SEC. 116. Except as otherwise provided in sections *119* (*b*), (*c*), *and* (*e*), 209, 211(c)(4), and 233 (preempting certain State regulation of moving sources) nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 111 or 112, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

PRESIDENT'S AIR QUALITY ADVISORY BOARD AND ADVISORY COMMITTEES

SEC. 117. (a)(1) There is hereby established in the Environmental Protection Agency an Air Quality Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and fifteen members while serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and while

away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

(f) Prior to—

(1) issuing criteria for an air pollutant under section 108(a)(2),

(2) publishing any list under section 111(b)(1)(A) or 112(b)(1)(A),

(3) publishing any standard under section 111(b)(1)(B) or section 112(b)(1)(B), or

(4) publishing any regulation under section 202(a),

the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independent experts, and Federal departments and agencies.

CONTROL OF POLLUTION FROM FEDERAL FACILITIES

SEC. 118. Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements. The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 111, and an exemption from section 112 may be granted only in accordance with section 112(c). No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

ENERGY-RELATED AUTHORITY

SEC. 119. (a)(1)(A) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before the earlier of June 30, 1975, or one year after the date of enactment of this section, temporarily suspend any stationary source fuel or emission limitation as it applies to any person, if the Administrator finds that such person will be unable to comply with such limitation during such period solely because of unavailability of types or amounts of fuels. Any suspension under this paragraph and any interim requirement on which such suspension is conditioned under paragraph (3) shall be exempted from any procedural require-

ments set forth in this Act or in any other provision of local, State, or Federal law; except as provided in subparagraph (B).

(B) The Administrator shall give notice to the public of a suspension and afford the public an opportunity for written and oral presentation of views prior to granting such suspension unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In any case, before granting such a suspension he shall give actual notice to the Governor of the State, and to the chief executive officer of the local government entity in which the affected source or sources are located. The granting or denial of such suspension and the imposition of an interim requirement shall be subject to judicial review only on the grounds specified in paragrapahs (2)(B), (2)(C), or (2)(D) of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304(a)(2) or 307 (b) and (c) of this Act.

(2) In issuing any suspension under paragraph (1) the Administrator is authorized to act on his own motion without application by any source or State.

(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the source receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and (C) requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available to that person (as determined by the Administrator). For purposes of clause (C) of this paragraph, availability of natural gas or petroleum products which enable compliance shall not make a suspension inapplicable to a source described in subsection (b)(1) of this section.

(4) For purposes of this section:

(A) The term "stationary source fuel or emission limitation" means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under this Act (other than section 303, 111(b), or 112) or contained in an applicable implementation plan (other than authority described in section 110(a)(2)(F)(v)), and which is designed to limit stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type or grade or pollution characteristic thereof.

(B) The term "stationary source" has the same meaning as such term has under section 111(a)(3).

(b)(1) Except as provided in paragraph (2) of this subsection, any fuel-burning stationary source—

(A) which is prohibited from using petroleum products or natural gas as fuel by reason of an order issued under section 10(a) of the Energy Supply and Environmental Coordination Act of 1974, or

(B) which (i) the Administrator of the Environmental Protection Agency determines began conversion to the use of coal as fuel during the period beginning on September 15, 1973, and ending on the date of enactment of this section, and (ii) the Federal Energy Administrator determines should use coal after the earlier of June 30, 1975, or one year after the date of enactment of this section, after balancing on a plant-by-plant basis the environmental effects of such conversion against the need to fulfill the purposes of the Energy Supply and Environmental Coordination Act of 1974,

and which converts to the use of coal as fuel, shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source. For purposes of this paragraph, the term "began conversion" means action by the owner or operator of a source during the period beginning on September 15, 1973, and ending on the date of enactment of this section (such as entering into a contract binding on the operator of the source for obtaining coal, or equipment or facilities to burn coal; expending substantial sums to permit such source to burn coal; or applying for an air pollution variance to enable the source to burn coal) which the Administrator finds evidences a decision (made prior to such date of enactment) to convert to burning coal as a result of the unavailability of an adequate supply of fuels required for compliance with the applicable implementation plan, and a good faith effort to expeditiously carry out such decision.

(2)(A) Paragraph (1) of this subsection shall apply to a source only if the Administrator finds that emissions from the source will not materially contribute to a significant risk to public health and if the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved, after notice to interested persons and opportunity for presentation of views (including oral presentation of views). A plan submitted under the preceding sentence shall be approved only if it (i) meets the requirements of regulations prescribed under subparagraph (B); and (ii) provides that such source will comply with requirements which the Administrator shall prescribe to assure that emissions from such source will not materially contribute to a significant risk to public health. The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

(B) The Administrator shall prescribe regulations requiring that any source to which this subsection applies submit and obtain approval of its means for and schedule of compliance. Such regulations shall include requirements that such schedules shall include dates by which such sources must—

(i) enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining a long-term supply of coal which enables such source to achieve the emission reduction required by subparagraph (C), or

(ii) if coal which enables such source to achieve such emission reduction is not available to such source, enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining (I) a long-term supply of other coal or coal derivatives, and (II) continuous emission reduction systems necessary to permit such source to burn such coal or coal derivatives and to achieve the degree of emission reduction required by subparagraph (C).

(C) Regulations under subparagraph (B) shall require that the source achieve the most stringent degree of emission reduction that such source would have been required to achieve under the applicable implementation plan which was in effect on the date of enactment of this section (or if no applicable implementation plan was in effect on such date, under the first applicable implementation plan which takes effect after such date). Such degree of emission reduction shall be achieved as soon as practicable, but not later than January 1, 1979; except that, in the case a source for which a continuous emission reduction system is required for sulfur-related emissions, reduction of such emissions shall be achieved on a date designated by the Administrator (but not later than January 1, 1979). Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable including requirements described in clauses (A) and (B) of subsection (a)(3) and requirements to file progress reports.

(D) The Administrator (after notice to interested persons and opportunity for presentation of views, including oral presentations of views, to the extent practicable) (i) may, prior to the earlier of June 30, 1975, or one year after the date of enactment of this section, and shall thereafter prohibit the use of coal by a source to which paragraph (1) applies if he determines that the use of coal by such source is likely to materially contribute to a significant risk to public health; and (ii) may require such source to use coal of any particular type, grade, or pollution characteristic if such coal is available to such source. Nothing in this subsection (b) shall prohibit a State or local agency from taking action which the Administrator is authorized to take under this subparagraph.

(3) For purposes of this subsection, the term "air pollution requirement" means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under any Federal, State or local law or regulation, including this Act (except for any requirement prescribed under this subsection, section 110(a)(2)(F)(v), or section 303), and which is designed to limit stationary source emission resulting from combustion of fuels (including a restriction on the use or content of fuels). A conversion to coal to which this subsection applies shall not be deemed to be a modification for purposes of section 111(a)(2) and (4) of this Act.

(4) A source to which this subsection applies may, upon the expiration of the exemption under paragraph (1), obtain a one-year postponement of the application of any requirement of an applicable im-

plementation plan under the conditions and in the manner provided in section 110(f).

(c) The Administrator may by rule establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out subsection (b) shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to users in air quality control regions with the most severe air pollution. No rule under this subsection may impair the obligation of any contract entered into before enactment of this section. To the extent necessary to carry out this section, the Administrator may prohibit any State or political subdivision from requiring any person to use a continuous emission reduction system for which priorities have been established under this subsection except in accordance with such priorities.

(d) The Administrator shall study, and report to Congress not later than six months after the date of enactment of this section, with respect to—

(1) the present and projected impact on the program under this Act of fuel shortages and of allocation and end-use allocation programs;

(2) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction systems would have on the total environment and on supplies of fuel and electricity;

(3) the number of sources and locations which must use such technology based on projected fuel availability data;

(4) priority schedule for implementation of continuous emission reduction technology, based on public health or air quality;

(5) evaluation of availability of technology to burn municipal solid waste in these sources including time schedules, priorities analysis of unregulated pollutants which will be emitted and balancing of health benefits and detriments from burning solid waste and of economic costs;

(6) projections of air quality impact of fuel shortages and allocations;

(7) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time frames prescribed in the Act, including associated considerations of cost, time frames, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

(8) proposed allocations of continuous emission reduction systems which do not produce solid waste to sources which are least able to handle solid waste byproducts of such systems; and

(9) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentration of sulfur dioxide in the ambient air.

(e) No State or political subdivision may require any person to whom a suspension has been granted under subsection (a) to use any fuel the unavailability of which is the basis of such person's suspension (except that this preemption shall not apply to requirements indentical to Federal interim requirements under subsection (a)(3)).

(f)(1) It shall be unlawful for any person to whom a suspension has been granted under subsection (a)(1) to violate any requirement on which the suspension is conditioned pursuant to subsection (a)(3).

(2) It shall be unlawful for any person to violate any rule under subsection (c).

(3) It shall be unlawful for the owner or operator of any source to fail to comply with any requirement under subsection (b) or any regulation, plan, or schedule thereunder.

(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i)(3).

(g) Beginning January 1, 1975, the Administrator shall publish at no less than one hundred and eighty-day intervals, in the Federal Register the following:

(1) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (b) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsections.

(2) Up-to-date findings on the impact of this section upon—

(A) applicable implementation plans, and

(B) ambient air quality.

(h) Nothing in this section shall affect the power of the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.

(i)(1) In order to reduce the likelihood of early phaseout of existing electric generating facilities, any electric generating powerplant (A) which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on January 1, 1974) of the operator of such plant, (B) for which a certification to that effect has been filed by the operator of the plant with the Environmental Protection Agency and the Federal Power Commission, and (C) for which the Commission has determined that the certification has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single one-year postponement as provided in paragraph (2).

(2) Prior to the date on which any plant eligible under paragraph (1) is required to comply with any requirement of an applicable implementation plan, such source may apply (with the concurrence of the Governor of the State in which the plant is located) to the Administrator to postpone the applicability of such requirement to such source for not more than one year. If the Administrator determines, after balancing the risk to public health and welfare which may be associated with a postponement, that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increases to pay for such costs, and other appropriate factors, then the Administrator shall grant a postponement of any such requirement.

(3) The Administrator shall, as a condition of any postponement under paragraph (2), prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph (2).

(j) (1) The Administrator may, after public notice and opportunity for presentation of views in accordance with section 553 of title 5, United States Code, and after consultation with the Federal Energy Administrator, designate persons to whom fuel exchange orders should be issued. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any suspension under subsection (a) of this section or conversion to coal to which subsection (b) applies or of any allocation under section 10 of the Energy Supply and Environmental Coordination Act of 1974 or the Emergency Petroleum Allocation Act of 1973.

(2) The Federal Energy Administrator shall issue exchange orders to such persons as are designated by the Administrator under paragraph (1) requiring the exchange of any fuel subject to allocation under the preceding Acts effective no later than forty-five days after the date of the designation under paragraph (1), unless the Federal Energy Administrator determines, after consultation with the Administrator, that the costs or consumption of fuel, resulting from such exchange order, will be excessive.

(3) Violation of any exchange order issued under paragraph (2) shall be a prohibited act and shall be subject to enforcement action and sanctions in the same manner and to the same extent as a violation of any requirement of the regulation under section 4 of the Emergency Petroleum Allocation Act of 1973.

TITLE II—EMISSION STANDARDS FOR MOVING SOURCES

SHORT TITLE

SEC. 201. This title may be cited as the "National Emission Standards Act."

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

ESTABLISHMENT OF STANDARDS

SEC. 202. (a) Except as otherwise provided in subsection (b)—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment causes or contributes to, or is likely to cause or to contribute to, air pollution which endangers the public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d)), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) (1) (A) *The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5) (A) of this subsection for light-duty vehicles and engines manufactured during model year 1975.* The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during or after model year [1975] *1977* shall contain standards which require a reduction of at least 90 percentum from emissions of carbon monoxide and hydrocarbons allowable under the standards under this section applicable to light duty vehicles and engines manufactured in model year 1970.

(B) *The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that emissions of such vehicles and engines may not exceed 2.0 grams per vehicle mile.* The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light duty vehicles and engines manufactured during or after model year [1976] *1978* shall contain standards which require a reduction of at least 90 per centum from the average of emissions of oxides of nitrogen actually measured from light duty vehicles manufactured during model year 1971 which are not subject to any Federal or State emission standard for oxides of nitrogen. Such average of emissions shall be determined by the Administrator on the basis of measurements made by him.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to the date of enactment of the Clear Air Amendments of 1970), shall be prescribed by regulation within 180 days after such date.

(3) For purposes of this part—

(A) (i) The term "model year" with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b), the Administrator may prescribe regulations defining "model year" otherwise than as provided in clause (i).

(B) The term "light duty vehicles and engines" means new light duty motor vehicles and new light duty motor vehicle engines, as determined under regulations of the Administrator.

(4) On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary to achieve the purposes of this Act. In gathering information for the purposes of this paragraph and in connection with any hearing, the provisions of section 307(a) (relating to subpenas) shall apply.

(5)(A) At any time after January 1, [1972] *1975*, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer *for light-duty vehicles and engines manufactured in model year 1977*. The Administrator shall make his determination with respect to any such application within [60] *sixty* days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed[,] by paragraph (1)(A) *of this subsection*) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year [1975] *1977*.

[(B) At any time after January 1, 1973, any manufacturer may file with the Administrator an application requesting the suspension, for one year only of the effective date of any emission standard required by paragraph (1)(B) with respect to such manufacturer. The Administrator shall make his determination with respect to any such application within 60 days. If he determines, in accordance with the provisions of this section, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(B)) to emissions of oxides of nitrogen from such vehicles and engines manufactured during model year 1976.]

[(C)] *(B)* Any interim standards prescribed under this paragraph shall reflect the greatest degree of emission control which is achievable by application of technology which the Administrator determines is available, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers.

[(D)] *(C)* Within 60 days after receipt of the application for any such suspension, and after public hearing, the Administrator shall issue a decision granting or refusing such suspension. The Administrator shall grant such suspension only if he determines that (i) such suspension is essential to the public interest or the public health and welfare of the United States, (ii) all good faith efforts have been

made to meet the standards established by this subsection, (iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available for a sufficient period of time to achieve compliance prior to the effective date of such standards, and (iv) the study and investigation of the National Academy of Sciences conducted pursuant to subsection (c) and other information available to him has not indicated that technology, processes, or other alternatives are available to meet such standards.

[(E)] *(D)* Nothing in this paragraph shall extend the effective date of any emission standard required to be prescribed under this subsection for more than one year.

(c) (1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this Act, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this Act (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

(d) The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a) (1) of this section and section 207. Such regulations shall provide that useful life shall—

(1) in the case of light duty vehicles and light duty vehicle engines, be a period of use of five years or of fifty thousand miles (or the equivalent), whichever first occurs; and

(2) in the case of any other motor vehicle or motor vehicle engine, be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate.

(e) In the event a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 206(a), the Administrator may postpone

certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers the public health or welfare but for which standards have not been prescribed under subsection (a).

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FUEL ECONOMY IMPROVEMENT FROM NEW MOTOR VEHICLES

SEC. 213. (a)(1) The Administrator and the Secretary of Transportation shall conduct a joint study, and shall report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committees on Public Works and Commerce of the United States Senate within one hundred and twenty days following the date of enactment of this section, concerning the practicability of establishing a fuel economy improvement standard of 20 per centum for new motor vehicles manufactured during and after model year 1980. Such study and report shall include, but not be limited to, the technological problems of meeting any such standard, including the leadtime involved; the test procedures required to determine compliance; the economic costs associated with such standards, including any beneficial economic impact; the various means of enforcing such standard; the effect on consumption of natural resources, including energy consumed; and the impact of applicable safety and emission standards. In the course of performing such study, the Administrator and the Secretary of Transportation shall utilize the research previously performed in the Department of Transportation, and the Administrator and the Secretary shall consult with the Federal Energy Administrator, the Chairman of the Council on Environmental Quality, and the Secretary of the Treasury. The Office of Management and Budget may review such report before its submission to Congress but the Office may not revise the report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting such report. In connection with such study, the Administrator may utilize the authority provided in section 307(a) of this Act to obtain necessary information.

(2) For the purpose of this section, the term "fuel economy improvement standard" means a requirement of a percentage increase in the number of miles of transportation provided by a manufacturer's entire annual production of new motor vehicles per unit of fuel consumed, as determined for each manufacturer in accordance with test procedures established by the Administrator pursuant to this Act. Such term shall not include any requirement for any design standard or any other requirement specifying or otherwise limiting the manufacturer's discretion in deciding how to comply with the fuel economy improvement standard by any lawful means.

DEFINITIONS FOR PART A

SEC. [213]. *214.* As used in this part—

(1) The term "manufacturer" as used in sections 202, 203, 206, 207, and 208 means any person engaged in the manufacturing or assembling of new motor vehicles or new motor vehicle engines,

or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce.

(2) The term "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) Except with respect to vehicles or engines imported or offered for importation, the term "new motor vehicle" means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term "new motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 202 which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

(4) The term "dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term "ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

TITLE III—GENERAL

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EMERGENCY POWERS

SEC. 303. Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted to abate such sources, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take other action as may be necessary.

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HOUSE DEBATE AND PASSAGE OF H.R. 14368, MAY 1, 1974

Mr. Bolling. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1082 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. Res. 1082

Resolved; That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 14368) to provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment under the five-minute rule. At the conclusion of such consideration, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Mr. Latta. Mr. Speaker, House Resolution 1082 is the rule on H.R. 14368, the Energy Supply and Environmental Coordination Act. It is an open rule with 1 hour of general debate. In addition, the rule makes the committee substitute in order as an original bill for the purpose of amendment.

The three primary purposes of this bill are: First, to permit narrowly defined variances from specific clean air requirements; second, to grant authority to increase the use of coal resources; and third, to direct the Federal Energy Administrator to obtain information on the Nation's energy supply situation.

Following the veto of the Emergency Energy Act earlier this year, the Committee on Interstate and Foreign Commerce began work on a new energy bill in early April 1974. At the conclusion of this consideration the committee voted to delete from the energy bill the provisions relating to alterations of clean air requirements, coal conversion and energy information reports. These provisions were then incorporated into the present bill, H.R. 14368. According to the committee report, the intent is to bring before the House in a separate bill those essential parts of this comprehensive package on which there is substantial agreement.

The cost of this bill is estimated to be $5,000,000 for fiscal year 1974, $35,000,000 for fiscal year 1975, and $5,000,000 for each of the 3 fiscal years following.

Mr. BOLLING. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. STAGGERS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 14368 to provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from West Virginia (Mr. Staggers).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 14368, with Mr. Dorn in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from West Virginia (Mr. Staggers) will be recognized for 30 minutes and the gentleman from Minnesota (Mr. Nelsen) will be recognized for 30 minutes.

The Chair recognizes the gentleman from West Virginia.

Mr. STAGGERS. Mr. Chairman, I rise in support of H.R. 14368, the Energy Supply and Environmental Coordination Act of 1974.

As everyone knows, this body has been considering legislation to cope with the energy situation since October of last year. The Congress did act to pass energy legislation, but that bill—S. 2589—was vetoed by the President.

Now the immediate crisis has passed. But the oil embargo could be reimposed at any time. Bad weather, strikes, or accelerated increases in demand could cause serious energy shortages. In my view and in the unanimous view of the Commerce Committee, there are some steps we can and should take now to deal with this possibility.

First, the Administrator of the new Federal Energy Administration must be given, and must exercise, the authority to get and verify necessary information on the Nation's energy supplies. Second, the FEA Administrator must be authorized and directed to make more effective use of our Nation's coal resources. Third, some carefully limited adjustments must be made to certain specific environmental requirements.

These provisions have been separated from the controversial provisions of the energy legislation. They have passed the committee unanimously and have previously passed both the House and the Senate. The President in his veto message did not oppose these provisions.

This bill will help meet the Nation's energy needs, but will not abandon our commitment to a healthy environment. For these reasons, I urge passage of H.R. 14368.

Mr. HASTINGS. Mr. Chairman, I do not believe that the House has to spend a great deal of time in going over the provisions of title II of the conference report that has been before this body on two separate occasions, and that has received favorable consideration on both of those occasions by the House.

Mr. Chairman, as the gentleman from West Virginia, the chairman of the full committee (Mr. Staggers), has pointed out, the bill before us today is precisely the language of the conference report on the so-called Emergency Energy Act, as it relates to the Clean Air Act. I would like to point out to the committee, however, that we started deliberations on this matter back in October of 1973, and we are now at this point in time of May 1, 1974, where we have not as yet given congressional approval to an energy plan.

The reason that I introduced a separate measure is because of the difficulties we had encountered with title I. I think it is entirely fair to present to the auto industry the means whereby they can proceed to manufacture their automobiles. The Congress holds in its hand the decision as to what type of emission controls standards are going to have to be met by the automobile industry, and we have been delinquent in not providing any date certain for them, and I urge that we today do so as quickly as possible, and try to overcome the 5 months of deliberations and equivocations on the entire question of what standards are in fact going to be in place.

The automobile emission standards referred to in this bill would keep the 1975 standards in place for the year 1976. It would give the Administrator the option of granting an additional year of delay in the implementation of the standards. **[Sec. 4, Sec. 202(b) CAA.]**

The coal diversion sections are as minimal as possible. They allow conversion of plants to coal where the Administrator finds it necessary, and yet protects the environment by demanding down the line that if they continue to utilize coal, they install scrubbing equipment. **[Sec. 2, Sec. 119(b) CAA.]**

Mr. Chairman, I strongly advocate as a compromise measure that we very quickly, without change, pass this measure and let the automobile manufacturers especially know what date they can proceed to manufacture their automobiles with the knowledge of what emission standards they will be required to meet.

Mr. MCCOLLISTER. I wish to associate myself with the remarks of the gentleman from New York, particularly those suggesting to the committee that the bill be passed in its present form, both because it is the result of a legislative process that has been too long at work, and because there are many divergent views. This Member will oppose any amendment, and he will vote for the bill in its present form.

Mr. HASTINGS. I appreciate very much the comments of the gentleman from Nebraska. I might add that there are people who would like to change this measure. There are people who would like to tighten up on the standards. There are people who would like to loosen up on the standards.

The gentleman from Florida, Chairman Rogers, has indicated that the Clean Air Act will undergo complete hearings, and will consider all changes at the appropriate time of hearings. But as the gentleman has mentioned, the time has come to pass this extremely minimal Energy Act and pass it as presently constituted, without any further attempt to change it.

The House can well remember being on this floor for hour after hour after hour debating various amendments. That bill never did see the light of day. Now we have arrived at a point where it is time to move, and pass this measure.

Mr. Chairman, I strongly advocate that this measure be approved without any changes whatsoever.

I yield back the remainder of my time.

Mr. WYMAN. Mr. Chairman, I have a great deal of respect for my colleague, the gentleman from New York, and for the position which he and other members of the committee urge in respect to this bill. However, the hard fact of the matter is that unless certain amendments are offered to this legislation at this time, the prospect is that they will not become a reality in regard to the next run of U.S. automobile production, or possibly in the future at any time.

I want to make very clear at the outset of discussion on this subject that I yield to no one in this House in my enthusiasm for clean air, clean water, noise abatement, and all of the other things that help to make America a better and more comfortable place for its citizens to live in.

But one of the things that is being done in this bill, in my opinion, ought not to be done, and that is to put the 1975 automobile clean air standards into operation. **[Sec. 4, Sec. 202 CAA.]** They are unnecessarily high and far too wide ranging in application. Let me explain, if I may, so that it will be understood. There are two or three basic facts that we need to be aware of. One is that there is no need for automobile emissions controls on any automobiles in better than 90 percent of the geographical area of the United States for any realistic public health interest on the part of our citizens. Specifically, there is no need for any emission controls on automobiles, for example, in the States of North Dakota, New Hampshire, Florida, Maine—one could go right on across almost this whole country.

The only automobile emission pollution that relates to public health in this country extends in a corridor from Boston, Mass., down to Richmond, Va., and in the Chicago area and in and around the Los Angeles area and to some extent in Phoenix and Tucson at certain times, and all of these areas are protected in an amendment which I will offer at the appropriate time in deliberations on this bill.

It seems to me it is unwise and unnecessary, at a time when the country is facing a gasoline shortage, and in fact, whether or not the country faces a gasoline shortage, it is unwise and unnecessary for us to be so enormously wasteful of energy in this country as to insist that everyone in the country have an automobile that is equipped with expensive emission controls unless there is an honest-to-goodness, down-to-earth public necessity for this.

The package of emissions controls in the 1974 models cost about $314 a car and everyone in the country is being required to buy them. At the

proper time, if the language which the gentleman from New York and the chairman of the committee insist upon is maintained in the law of this country, there will have to be catalytic converters on all the 1975 cars. This will add in the vicinity of $150 a car to every single new car cost, which will bring the package of emissions gadgets pretty close to $500 per car. In addition, these catalytic converters will shrivel up and die and become ineffective if they eat leaded gasoline. The country in the future is going to have to have a different kind of gasoline nozzle at the pumps and it is going to have to have unleaded gasoline all over the country at an enormous cost and at a refinery penalty, for a barrel of crude for unleaded gasoline of 4 or 6 percent.

It has been urged that there will be a fuel economy from the use of the catalytic converter, but the economy is lost in the penalty that occurs at the refinery in the reduced number of gallons of gasoline one can obtain from each barrel of oil.

I put in the Record yesterday, and it is in the appendix of the Record today at page E2648, a factsheet attempting to answer some of the questions about my first amendment that will be offered today, to take emissions controls off of automobiles registered to residents of approximately 90 percent of the geographical area of the United States. It will thus relieve Americans who operate and own cars in those areas, because it applies to persons who are residents of those areas. It will relieve them of the very substantial initial cost burden and also relieve them of a fuel penalty burden that EPA itself in its latest report advises is an average for all cars in the country of at least 10 percent or 1 gallon out of every 10. It will provide that residents of those parts that do have a pollution problem—the persons who operate automobiles there better than half of the time will continue to have to have emission-equipped cars.

I think this is a significant improvement on the situation. I cannot understand for the life of me why it is that the committee and members of the committee decline to take America to a two-car policy. It will save billions of gallons of gasoline and billions of dollars. Apparently some of the gentlemen are of the opinion that automobile emissions go up into the atmosphere and pollute the world's air.

The fact of the matter is that the breezes blow and the rains fall and these emissions are dissipated. They are not present in sufficient quantity to injure the public health in most of America. Required on cars in areas in which there is virtually no concentration of pollution they impose an enormous fuel penalty and an enormous capital wastage on the citizens of this country.

Under my amendment the EPA Administrator is authorized to designate the geographical boundaries of the so-called emissions-related problem areas. These are air quality regions. There are 13 of them designated. After he has once designated them, and he must do it within 60 days from the time the amendment becomes law, if he wants to add another area in America that he feels has a problem, he can do so but he must first come to the Congress and to the Commerce Committee and obtain approval of the Congress before he does this.

Now, if we take, just for example, a State such as Florida and we total the number of 1975 cars that will be registered in the State of

Florida, that will be bought there, if we assume it was nothing but 100,000, if there is to be a penalty of nearly $500 a car, to insist upon a requirement that all of the people of Florida should have this kind of a restriction on their automobiles imposes a capital penalty on them of nearly $50 million in that one State alone. It seems to me this is wrong for America—an unjust and unnecessary burden.

Now, how much gasoline will be saved? The answer is that the existing shortage of 15 percent will be virtually wiped out. Seventy-five percent of the cars in this country will be costly and wasteful emissions controls free if this amendment goes through.

The automobile industry can live with this two-car policy very easily. Their production lines will simply have an additional step for the 30 percent of the cars that have to have emissions controls on them. They will not have emissions controls on the 70 percent of the other production. The dealers can live with this also.

What is to stop, we may ask, for example, a person who resides in an air quality region from going outside the region and buying a car that does not have emissions controls on it? The answer is that under the amendment it is a misdemeanor punishable by a fine or a sentence in jail. Everyone can live with this. The savings will be very substantial.

More importantly, the ambient air quality of the regions that the Administrator designates as air quality control regions will not be significantly adversely impacted by the in and out traffic of cars that do not have emission controls because that traffic ranges anywhere from 2 or 6 percent and it is not large enough to create a real problem.

The savings for the people of America would be billions of gallons of gasoline a year. If we are short of gasoline and energy, if we are looking as we are to get more energy from coal and possibly make oil and gas from coal, to expedite additional drilling and recovery of gas and oil from places in this country where it is available, we ought to give our attention to this problem and do it right now. It is the one way we can act right now to end the gasoline shortage in this country overnight.

The facts concerning my amendment are as follows:

GENERAL FACTSHEET

1. The amendment proposes suspension to emissions requirements on light-duty vehicles until September 30, 1977. How many cars will be affected?

Answer: Approximately 70 percent of all new cars manufactured 60 days after passage and a substantial number of older cars already on the road that may legally be modified by dealers to achieve greater mileage and economy.

2. Whose cars are affected?

Answer: Those belonging to persons resident outside of thirteen air quality regions the boundaries of which must be designated by the EPA administrator within 60 days after passage.

3. Will this impair air quality or mess up the clean air of the non-air quality regions?

Answer: Not in the slightest. Most of the United States has no significant air pollution from automobile emissions that adversely affects public health. The winds blow, the air moves, the rains fall. The emissions are not cumulative. They are dispersed and they do not exist in quantities that make people sick or impair their required air quality except in heavy concentrations and these areas are specified as "air quality regions".

4. Will it save gasoline?

Answer: In the billions of gallons each year.

5. Will it save money?

Answer: Hundreds of millions of dollars in costs to consumers in what they must pay for their cars (approximately $314 per car) and for their operation thereafter.

6. Can the automobile industry live with what amounts to a two car standard?

Answer: Yes; the industry will make two types of cars, one with emissions controls and the other without. This assembly line technique is not unduly burdensome.

7. Can the automobile dealers live with the requirement?

Answer: Yes; persons (customers) will purchase the same number of cars but residents outside of air quality regions will mostly purchase cars without emissions controls because they will cost less and operate more inexpensively.

8. What is to prevent persons who reside in air quality regions from going to dealers with emission free cars and buying one?

Answer: This is a criminal misdemeanor under the amendment punishable by fine and imprisonment.

9. What will be the effect of the amendment on the gas shortage?

Answer: It will cut it virtually in half (or at present levels eliminate it entirely). Under the amendment persons owning earlier model cars may have them modified by professional experts to increase their gas mileage. This is prohibited by dealers under existing law. Manuals of instruction on this will be prepared and furnished to dealers by manufacturers.

10. What savings in gas mileage is involved in terms of present cars and new cars yet to be manufactured?

Answer: EPA itself estimates the overall fuel penalty under the 1970 standards ranges downward from 18% on larger cars to an overall average exceeding 10 percent. 70% of new cars will have no fuel penalty because they will have no emissions controls. Older cars may be modified at individual owners option. Net gas savings at least one gallon in ten, and in some instances much more.

11. What about the in-and-out traffic into air quality regions of cars without emissions controls?

Answer: It will not significantly adversely affect the air quality in those regions because the traffic in and out is not that heavy; it ranges from 2–6 percent.

12. What about the inequity between persons who live in such regions and those who live outside of them in terms of what they have to pay for their cars?

Answer: Why require the entire nation to bear the hugely energy wasting burden that is a problem only in a small part of the country? When a person moves from an air quality region to an unrestricted area he may acquire an emissions control free vehicle if he desires. Similarly when the reverse applies the additional cost is part of the price of maintaining clean air standards in the controlled region. There is little sense, for example, in requiring all of the residents of the entire State of North Dakota to purchase emissions control equipped cars when the area has no emissions control related air pollution. Multiplied nationwide the energy cost of such a requirement becomes both ridiculous and energy wasteful to a point deserving of the rising public criticism that prevails in the United States on this matter at this hour.

Mr. Nelsen. Mr. Chairman, I rise in support of this bill. I wish to point out that this bill as originally enacted, including the total energy problem, we will recall, was here for lengthy debate and was finally vetoed.

It seemed crystal clear to the committee that title II of the bill was a necessary step that must be taken at this time so that the automobile industry would know where to go and know what our instructions to them would be. This we have tried to do.

I want to speak briefly to the amendment that has been offered and point out that many changes have been made in engineering, so that some of the catalytic converter attachments have been improved to a degree that some fuel economy has been restored. We will be speaking to that at a later time when the debate centers on that amendment.

I would like to mention the provision in the bill dealing with sta-

tionary standards dealing with emissions where we are seeking to get our coal conversion program going and more use of coal. **[Sec. 10.]** It becomes crystal clear that the United States of America does not have the available crude oil, the available gas, even if the Alaskan pipeline comes in. It means that the only way that the United States of America can finally stand on its own, be independent, have an energy supply, will be with proper attention to our development in the field of coal.

I think as time goes on, when we extend the Clean Air Act, I hope to offer some amendments, and I hope the House will support them, where we can do a better job on developing our own energy resources looking to the future.

In this bill, we do have some provision in it where our stationary sources can convert to coal, and they have been doing so over a period of months. I believe the bill is moving in the right direction.

Mr. Chairman, I want to say that title II of this bill has in it some reporting sections that seem to be in some controversy, but I think can be clarified later. However, I think the bill in itself is a necessary piece of legislation. It ought to be passed; it must be passed. I hope the House gives it its support.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I thank the chairman very much for yielding to me. As I advised the chairman, I received a letter today from the Under Secretary of Commerce expressing some concern about the language in **section 11** which might breach the confidentiality of information which people submit to the Department, including the Bureau of the Census.

What I would like to ask the gentleman from West Virginia, in order to establish some legislative history, is about the words in **section 11** "where a person shows" and the words "upon a showing—by any person"—does this mean that the initiation must come from the person who supplied the information, or can the Administrator unilaterally seek it?

Mr. STAGGERS. Mr. Chairman, several Members have expressed the concern that **subsection (e)** of **section 11** appears to give the Administrator of the Federal Energy Administration unqualified access to the files of all other Government agencies. This is not the case. **Subsection (e)** is designed to protect suppliers of information from the burdens of filing duplicate reports. The Administrator would be given access to information in the possession of another agency only when an individual or business concern asks to be relieved from complying with the Administrator's requests for information. It should be emphasized that under the language of **subsection (e)** the Administrator may not exempt business entities on his own motion. If no one asks for an exemption, he cannot get the information from the other agency.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I thank the chairman. I presume the explanation would also apply to subsection (f), which uses similar words "upon a showing—by any person."

Mr. STAGGERS. This is correct, at least to my knowledge. I would believe so.

Mr. MOORHEAD of Pennsylvania. I thank the chairman very much.

Ms. ABZUG. Mr. Chairman, I find this a very deceptive bill. It is labeled the "Energy Supply and Environmental and Coordination

Act," but it contains no energy conservation measures. As a matter of fact, the bill, as I read it—and I am not on the committee—provides nothing related to the supply or conservation of energy that we do not already have in existing laws or programs.

What it does, essentially, is use this as a pretext for suspending some very important environmental safeguards. There are some people who want to balance environmental safeguards against energy conservation, and I can appreciate that, but there is not a question of balancing. This bill simply scuttles significant environmental provisions without cause, and without doing anything about energy.

Mr. Chairman, I am really quite concerned that the committee reported out this bill.

What does it do?

One. It would allow major powerplants to convert to coal without having to meet primary health standards for 4 years. It changes the present law which requires such facilities to comply with emission limitations not later than mid-1975. **[Sec. 2, Sec. 119 CAA.]** These plants are encouraged to switch to coal now and control their pollution later, while under present law they could begin to burn coal only after they had installed control equipment. Carl Bagge, president of the National Coal Association, testified before Senator Jackson's committee, that significant new supplies of domestic coal could not be made available for several years—and that it would take several years for railroads to get the kind of rolling stock and refurbish the track needed to deliver coal in quantities to powerplants now burning oil.

The American Public Health Association has estimated that extensive conversion from oil-burning to coal-burning powerplants will cause "an increase of 20 to 40 percent in both morbidity and mortality due to respiratory and cardiovascular disease"—New York Times, January 23, 1974.

Coal conversion is made to look even more absurd when one realizes that coal is currently in shorter supply than oil.

The New York City Environmental Protection Administration revoked a short-term variance to Consolidated Edison to burn coal and high sulfur oil once it realized that the shortage of oil conforming to State and local pollution control standards was far less than expected and this is so all over the country.

The present energy crisis has now made us painfully aware of how good environmental policy is, also good energy policy, by demonstrating another ill effect of our unbalanced transportation system—its unconscionable waste of energy.

In response to the command of the statute, as interpreted by the courts the Environmental Protection Agency last year promulgated transportation control plans for a number of major cities. EPA's transportation control plans encouraged the use of carpools and exclusive bus lanes. As we have found out this winter, carpooling saves energy as well as improving air quality.

A number of EPA's transportation control plans also required the imposition of a so-called parking surcharge, which would have placed a small daily charge on cars parking in parking lots within a metropolitan area during rush hour. The proceeds of this surcharge were to be used to support and expand mass transportation facilities. As

the revenues from the surcharge enabled expansion of mass transit facilities, the surcharge was to be gradually increased. It was hoped that this practical combination of carrot and stick would be an effective means to lure increasing numbers of people from private cars into mass transit, reducing air pollution accordingly.

Yet the bill before you would prohibit EPA altogether from initiating the proposal. **[Sec. 110(c) CAA.]**

Two. This bill would also freeze auto emissions at the interim 1975 levels for 1976 model year vehicles and postpone the achievement of the NO_x standard until 1978. **[Sec. 4, Sec. 202 CAA.]** Since recent EPA hearings showed that auto companies could meet the 1975 standards, further delay is not justified. This delay would actually waste energy. Freezing auto emissions at the interim 1975 level will delay a shift to catalytic converters which, according to GM's own figures, would save up to 13 percent in gasoline consumption. Other figures presented by Ford and other motor companies are much higher.

Third. The bill would also curtail and delay aspects of the transportation control strategies developed by the EPA under the act. The clean air amendments, **section 110(a)(2)(B)**, require that, where necessary to attain air quality meeting the national air quality standards protecting public health, States shall institute measures to curtail the total miles driven, or "transportation controls." This requirement was placed in the act in recognition that in some heavily polluted areas, reductions in emissions from new cars would not be sufficient to produce healthful air quality quickly, if at all.

The congressional decision to require transportation controls was one of the most far-sighted aspects of the clean air amendments. Though focused on reducing air pollution, it represented congressional recognition that a major cause of the unhealthful levels of air pollution in many of our cities was our unbalanced transportation system, which placed far too much reliance on the private car as a means of transporting people on the routine trip to and from work. It was a decision that the States and cities should move toward increased reliance on mass transit facilities for such trips.

In the recent period of the "fuel crisis" it was demonstrated that other ways can be found by the citizens of this country to conserve oil. And they did conserve oil. If the Members believe that they can go back home and say that this is an energy bill, they will not succeed. It has only the word "energy" in it, but there is not one provision in this bill which does anything to roll back prices, which does anything to control profits, or which does anything to make certain there will be a proper allocation of oil on a priority basis so that, for example, low-sulfur oil will be allocated to areas who have serious air pollution problems. The bill does nothing.

If we should pass this bill, then we will have, by this action, participated in invading the atmosphere, not just a bit, but we will be responsible for creating serious hazards to health which will be immediately affected.

There is nothing in this bill which will do anything about the real problems of energy. Such provisions which purport to deal with such problems are already provided for in other regulations or legislation.

As far as the reporting provisions are concerned, as I recall from the FEA Act which we passed has reporting provisions. These may be

a little different but not enough to warrant our turning back the clock. As far as studying the problem of energy and the problem of energy supply, it seems to me we have provided for that in other legislation. With respect to allocation of fuel on the basis of need or priority, the Emergency Petroleum Allocation Act and regulations exist under which the administration could act to properly allocate with a view to priorities if it wished to. With respect to studies on the need for mass transportation they are underway and significant new mass transportation legislation is being drawn.

So, Mr. Chairman, the purpose of this bill seems to be to fool the public. The purpose of this bill seems to be to utilize this moment opportunistically and take unfair advantage of the generations of the future by trying to scuttle and destroy the Environmental Protection Act and the Clean Air Act. This I suggest is a goal many special interests have sought for a long time. Let us not hand it to them on a silver platter.

Mr. Chairman, I urge that if the Members have any sense of responsibility, they should vote this bill down, and then let us proceed to work on a real energy bill.

Mr. Rogers. Mr. Chairman, I rise in support of the provisions of H.R. 14368, a bill authored by our hardworking colleague on the Subcommittee on Public Health and Environment, Mr. Hastings. This bill is virtually identical to the environmental provisions of the conference report on the energy bill adopted by this body in February, but which unfortunately was vetoed. The conference report on these provisions was agreed to after a bipartisan conference consisting of Mr. Hastings and myself for the House, and Senators Randolph, Muskie, and Baker for the other body. It was agreed to by the conferees to the energy bill without dissent. And it was agreed to by this body. Moreover, the Hastings bill—which embodies these provisions—was adopted without dissent by the Interstate and Foreign Commerce Committee last week.

Mr. Chairman, the long and complex deliberations which accompanied development of these provisions, in my judgment, make it vital to the public interest that this bill not be amended on the floor today. The automobile companies must make immediate decisions with respect to automotive controls. They must base their decisions in certain features of this bill. They are entitled to a final decision now.

The provisions of this bill have not been objected to by the Environmental Protection Agency or the White House. They have already received favorable support in the House and in the Senate. They have been thoroughly debated. These provisions deserve continued support—as they now exist—by this body.

Mr. Chairman, these are provisions which are energy related. Other provisions of the Clean Air Act which are not related to the energy situation also need attention. The Subcommittee on Public Health and Environment will conduct hearings on these provisions in June, and we intend to submit further amendments for the consideration of our colleagues before June 30.

Mr. Wyman. Is the gentleman aware of the fact that the automobile industry will start production on the 1975 models within 60 days?

Mr. Rogers. That is exactly the point; that is what they need to do to protect health. I know the gentleman does not want catalytic con-

verters on all automobiles, but the industry is already prepared to do so because they are needed to protect the health of our Nation. The health of the American people ought to be the primary factor. The energy crisis has eased up, and I know the emotions of the gentleman, and I respect his feelings. However, some of the facts that were given do not jibe with the record. For instance, it will not cost $300 an automobile by any means to install converters. The record is very clear on that from the manufacturers themselves who are building it. The cost is more like $150, half the amount the gentleman suggested.

The administration is ready for us to move the bill. People all over the country are ready. The Congress itself ruled on this amendment twice in December, and we are ready to move now.

Mr. WYMAN. If the gentleman will yield further, the people of this country in the places where there is no need for automobile emission controls object to paying the additional hundreds of dollars in the aggregate for the gadgetry that must be put on these cars as well as the fuel penalty. Why should we require the industry to produce cars with emission controls on them with this cost involved if we know in advance of the production of the new cars that we do not need them for 70 percent of the cars involved and therefore can save billions of dollars?

Mr. ROGERS. Because the facts that the gentleman states are not supported by the record or by the experts. As a matter of fact, 66 cities would be adversely affected if the gentleman's amendment were to be adopted and two-thirds of the people of this Nation would be adversely affected by it. I can go right down the line to show you what the health effects would be on the Nation, because it is all documented. It is not just my idea. I am not grabbing facts out of the air. None of the large automobile companies support the gentleman's amendment. They know they should proceed to clean up the air. I do not know of anyone who is supporting the gentleman.

In fact, let me say this: Recently a poll was taken in the suburbs around this metropolitan area, and do you know what its results were? They wanted more done by Government with regard to three things: Schools, transportation, and air pollution, and in some cases this poll, which was just published today in the Washington Post, efforts against air pollution ranked even before more efforts for schools.

Mr. WYMAN. Mr. Chairman, I would ask the gentleman from Florida: Where does the gentleman get the figure of 66 cities in this country with pollution from automobile emissions that significantly impact on the public health? Where does the gentleman get that figure?

Mr. ROGERS. From a study that was done by scientists that I have here with me.

Mr. WYMAN. By what scientists?

Mr. ROGERS. I would be happy to provide the gentleman with a list. I believe he has such a list, and I notice the gentleman from New York also has the list that he can give to the gentleman.

I might say also to the gentleman from New Hampshire that we have had significant problems in Florida contrary to what I know the feeling of the gentleman is. They had an alert in Miami caused by pollution from automobiles in Miami. We have also had that occur in Tampa. Tampa is a city that will be affected along with 66 other cities, two-thirds of the people.

So, Mr. Chairman, I think the House used good judgment when it twice voted down the amendment offered by the gentleman from New Hampshire in December, I recognize the sincerity of the gentleman from New Hampshire, but I do think the House has already rendered a proper judgment or the amendment, and I believe it will do so again.

Mr. WYMAN. Why should the people who do not live in those areas, and do not operate cars in those areas, have to pay such bills?

Mr. ROGERS. Because of the pollution effect.

Mr. WYMAN. How does it do so?

Mr. ROGERS. The gentleman himself recognizes that air moves around. It does not stay in one place. So the pollution can move around. In fact, we had it move from the Northeast to Birmingham a few years ago, with a huge, black cloud of pollution, necessitating temporary closure of the steel mills in the cities.

Mr. WHITE. Mr. Chairman, this bill in its present form threatens to undermine the strict confidentiality historically accorded data relating to individual persons and establishments collected by the Bureau of the Census. Title 13, United States Code, places strict limitations on access to such data. These limitations would be swept aside by the provisions of **section 11(e)** of this bill, which allow the Federal Energy Administrator to obtain data from other Federal agencies notwithstanding any other provision of law.

This bill, if passed in its present form, would jeopardize past promises of confidentiality made by the Government to the people of these United States, the Census Bureau has an outstanding record of preserving the confidentiality of information furnished to it by respondents. A forced violation of such confidentiality practices could damage that reputation and thereby impair the Census Bureau's ability to procure information essential to this country's well-being. Moreover, it would do further damage to the integrity of the Government—integrity which has already been tarnished in too many other areas.

The amendment I propose would keep intact the standards of confidentiality for census data now imposed by title 13. Adoption of this amendment, I believe, is essential if the Government is to continue to depend on the Census Bureau to provide constitutionally mandated population counts and other information on conditions in our society.

The amendment follows:

AMENDMENT TO H.R. 14368, AS REPORTED OFFERED BY MR. WHITE

Page 76, line 17, insert before the comma the following: "Pursuant to any provision of law (other than title 13, United States Code)".

Page 76, line 20, insert before the final comma the following: "(other than title 13, United States Code)"

Mr. Chairman, I only wish to say I reviewed this problem with the chairman, recommending that we might ease the situation and make some change of words. The information that he feels is important can be attained at the same time by a change of structure of the amendment to satisfy the concern that has been expressed, and I wish he would review that at the time for amending.

Mr. VANIK. Mr. Chairman, I should like to tell the committee that I should like to offer an amendment which would slightly change the language relating to fuel efficiency standards. The bill in its present form talks about fuel efficiency standards, and seek a 20-percent improve-

ment by 1980. I think that is entirely inadequate. I do not think it is going to meet the urgency of these times.

I should like to offer and expect to offer an amendment which would provide that by 1980 we would have fuel efficiency of at least 20 miles per gallon, because I think the urgency of the energy crisis calls for that kind of efficiency.

Mr. HARRINGTON. Mr. Chairman, America's consumers, helpless as utility bills have skyrocketed, are demanding relief from Congress.

The response that is being offered today—the so-called Energy Supply and Environmental Coordination Act—would not satisfy their real demands—lower fuel costs and the assurance that they and their children and grandchildren will not be forced to live in a filth-clogged world where every breath of air is a risk.

While the price of coal is presently lower than the equivalent amount of oil, Bureau of Mines figures indicate that the very passage of this bill might change that situation. The wholesale price index, where 1967 coal prices are used as a base, show that the price of coal had risen 97 percent by 1972, 110 percent by 1973, and 160 percent by January 1974.

Coal, therefore, is clearly rising in cost. With the increased coal demand that, of course, would accompany the passage of this bill, the rise in coal costs would surely accelerate. In fact, some experts have warned not of a future "oil crisis" but of a "coal crisis."

In addition, the price of coal will likely be forced to rise even further due to the impending expiration of the United Mine Workers' contract later this year. A new contract will be negotiated under a new union president committed to improved working conditions. Improvements, while certainly needed, are also costly.

Should management and labor fail to reach an acceptable settlement, coal workers may decide to strike. If we increase our dependence upon coal and find ourselves in the unfortunate and crippled position Great Britain was in last winter, we shall hardly have done our constituents a service.

I might add that the utilities want to negotiate long-term contracts, but the coal companies are not willing to do so, since such long-term contracts would involve uniform prices of coal over a number of years. Instead, the utilities are forced to buy coal on the spot market, where prices continually move higher.

The combination of these factors, with the emphasis on the rise in demand in an industry with several production problems, suggests that the now attractive price differential between coal and oil may narrow appreciably.

There are other reasons for opposing the bill, though. Seven of the 15 largest coal producers in the United States are oil companies.

This trend toward horizontal integration poses threats to competition. Oil companies are unlikely to encourage large production of coal to the point where it decreases the price of oil. It is much more likely that coal prices will move upward to meet oil prices, leaving us in the position we are in now—at the mercy of the major oil companies. We can hardly expect price competition when oil companies control a significant sector of the coal industry. Congress simply should not be a party to accelerated anticompetitive behavior, especially in a bill ostensibly designed to cut consumer costs.

By far my greatest reservations, however, are in the environmental and health areas. Relaxed air standards **[Sec. 2, Sec. 119 CAA]** would

directly affect the lives of thousands of people who suffer from respiratory and cardiovascular diseases. Statistics gathered by the American Public Health Association show that long-term conversion by industry to coal would increase the mortality rate 20 to 40 percent among these people. It seems to me that this unthinkable cost in human health and well-being renders unacceptable any conversion to coal as a primary electric-generating fuel in urban areas.

In addition, the safety record among mine workers is appallingly low. Underground mining is one of the most hazardous industrial occupations in the Nation. And surface mining poses questions of soil erosion, pollution of surface waters, and destruction of wildlife habitats. Some look to western coal, which has a low sulfur content—and is therefore, more attractive environmentally—for our new sources of coal. Yet, a National Academy of Sciences study points out that in many parts of the West, where there is little rainfall, soils cannot retain moisture, and reclamation is not possible.

If we opt for a higher sulfur content coal, we may encounter acid mine drainage, where sulfuric acid leached from exposed coal seams contaminates surface and ground waters.

While I oppose the use of coal in the context of this bill, I would propose a crash program to perfect stack gas cleaning techniques, to find ways to liquefy and gasify coal, and to exploit deep coal in the East. Further, I would like assurances that coal prices will stay reasonably priced by diversifying coal company ownership and by removing coal's hidden environmental and health costs. Meanwhile, we must forego strip mines, which are so abhorrent environmentally that it seems pointless to pursue the subject.

Generally speaking, the Congress must stop approving bills without considering long-range, as well as short-range, implications. If we continue to be environmentally and economically shortsighted, we will continue to be plagued by problems that we should have solved ourselves. A little more care will go a long way toward assuring that we will, in fact, alleviate the energy crisis without exacerbating the environmental crisis.

Mr. FRASER. Mr. Chairman, I rise in opposition to H.R. 14368, the Energy Supply and Environmental Coordination Act

In the bill before us this afternoon, we find, in effect, certain of the amendments to the Clean Air Act of 1970, which the administration proposed to Congress on March 22. These amendments would establish congressional authority to delay clean air standards established by the act. I wish to express my opposition to any long-term comprehensive plan to relax air quality standards as proposed in the legislation we are considering this afternoon.

Problems invariably occur in the implementation of a law as far reaching as the 1970 Clean Air Act. Some minor changes in the law may be needed. However, a wholesale sellout to the administration's proposals is not a justifiable answer to the problem. Under the authority we are reviewing today, the President, through the Administrator of the Environmental Protection Agency, would be given outright power to suspend provisions of the present Clean Air Act without opportunity for review and without requiring any environmental or other assessment. **[Sec. 6(c).]**

H.R. 14368 WILL NOT INCREASE COAL SUPPLIES IN SHORT RUN

The declared purpose of the bill before us is to permit increased use of coal resources. The Clean Air Act does not prohibit the burning of coal. It prohibits the burning of coal without emission controls.

No matter how much we relax our air quality standards, the best estimates are that it will be 2 or 3 years at least before significant additional amounts of coal will be available. Labor problems, shortages of railroad equipment for transportation, shortages of mining machinery—all these factors place constraints on the amount of coal we can produce.

EPA Administrator Russell Train has stated that—

Relaxing or relinquishing our environmental effort will release over the long run, only marginal amounts of supply, and over the short run, no new supply at all.

STACK-SCRUBBING EQUIPMENT

If we have to grant variances to permit use of high-sulfur coal, we should at the same time require the use of stack-scrubbing equipment. What is at issue here is the feasibility of stack scrubber technology. The EPA has affirmed, time and again, that the technology is available and practicable. Industry says that it is not—that it is overly costly and unreliable.

This morning's New York Times tells of General Motors' success with a new stack-scrubbing system at its Chevrolet Motor Division plants near Cleveland, which cut sulfur dioxide emissions by 90 percent. The difficulty with the system is that it adds about $10 to the cost of each ton of coal used.

The savings in benefits to human health is not calculated.

COSTS OF AIR POLLUTION IN HUMAN HEALTH

An American Public Health Association study has projected the number of extra deaths among the elderly, and additional respiratory illnesses among the very young, which can be expected from an extensive increase in use of coal by electric powerplants without installation of emission-control equipment. In 1 year alone, the sulfur dioxide pollution that would result in densely populated areas would bring about an additional 13,000 to 14,000 cases of respiratory illness in children under 5 and an extra 12,000 deaths in people over 60.

A February 1973 EPA report calculated the dollar costs of air pollution for 1968 at $16.1 billion. One fourth of this—roughly $4 billion—can be attributed to sulfur dioxide emissions from powerplants. The cost of controlling this pollution could not equal the enormous cost of these emissions in terms of damage to human health and to vegetation and residential property.

H.R. 14368 WOULD MEAN CHANGE IN FEDERAL-STATE ROLE IN AIR QUALITY CONTROL

If the proposed revision in the Clean Air Act is accepted, there would be a change in the relationship of the State and Federal governments in establishing clean air standards. **[Sec. 2, Sec. 119 CAA.]**

In the past, Congress has recognized the right of the individual States to adopt more stringent pollution control standards and to set more stringent deadlines for compliance. With the passage of the amendments, the whole emphasis on cleaning up our environment would be prevented from setting their own standards.

My home State, Minnesota, has made great strides in implementing procedures and establishing deadlines for fulfillment of the act. The Minnesota Pollution Control Agency is charged with the responsibility of implementing and enforcing regulations mandated under the Clean Air Act. In a letter to my office, MPCA executive director Grant Merritt discusses how the proposed amendments will adversely affect Minnesota's efforts to protect and enhance our air. He suggests possible solutions to the problems facing us as we cope with the energy crisis. The health and well-being of our human as well as physical environment are at stake.

I include in the Record at this point the relevant portions of Mr. Merritt's letter:

The [Minnesota Pollution Control] Agency does not believe that problems with the [Clean Air] Act have been of a magnitude sufficient to justify approval of the administration's proposed amendments.

1. Discretionary authority granted the Administration would be excessive. This not only could cause an endless series of administrative changes that would confuse and frustrate enforcement efforts, but would also further limit the role of Congress in establishing national policy—this at a time when there is great concern over the diminishing leadership role of Congress.

2. At least one change, that of "freezing" the 1975 automotive emissions standards through 1977, may have unnecessarily detrimental consequences. In addition to causing potentially serious problems with the maintenance of vehicle emissions standards, this proposal also could result in needless energy waste. To meet the 1975 emissions standards, the automobile industry likely will rely on the oxidation catalyst (a muffler-like device that fits on the tailpipe and converts carbon monoxide and hydrocarbons to harmless carbon dioxide and water). A problem with the catalyst is that emissions of sulfates likely will increase substantially. By freezing the 1975 deadlines, reliance on the catalyst may likewise be extended, not only adding to the sulfate-emission problem but possibly delaying development of energy-efficient and pollution-reducing new engine technologies. Moreover, the catalyst likely would cause a wholesale changeover to lead-free gasoline facilities, for which the energy cost would be high.

As you also are aware, the National Academy of Sciences is engaged in an extensive study on various aspects of the Clean Air Act. The study is to be completed this summer. In view of the importance of the matter, it seems that it would be prudent to wait a few months for the results of this study before action is taken on any major changes in the Clean Air Act.

In carrying out one portion of the Clean Air Act, the Agency devised a transportation-control plan for the Minneapolis central business district where emissions of carbon monoxide violated federal and state standards. The cooperation of the City of Minneapolis and several state agencies, including the Minnesota Highway Department and the Metropolitan Transit Commission, resulted in the development of a plan that will succeed in meeting the standards by the May 31, 1975, compliance date. The Minnesota transportation plan will not be affected by the Administration's proposed amendments.

H.R. 14368 WILL NOT SOLVE OUR ENERGY PROBLEMS

Our energy and environmental problems come from the same source—habitual forms of development and growth that are wasteful both of energy and other environmental resources.

We can achieve significant energy savings through increased emphasis on mass transit, recycling of materials, smaller cars, and other energy-efficiency measures. The preliminary report released by the Ford Foundation's energy policy project estimates that by cutting fuel used for transportation by 7 percent—possibly through rescheduling of airlines and gasoline rationing—we could save as much oil as through a massive switch of powerplants from oil to coal—and without the terrible price in human health.

We must not jeopardize, for an illusory short-term gain, the hard-won advances we have made in air quality over the past few years. The bill before us would unnecessarily relax air quality standards without necessarily increasing our supplies of energy. I ask you to join me in voting against it.

Mr. Bingham. Mr. Chairman, on December 12, during the debate on the original Energy Emergency Act, I said that the bill was an incomplete package of proposals, plans, and short-term authorizations which avoids some of the hardest and most important questions about how this Nation should deal with the impending shortages of petroleum products. That statement is as true today as it was then. We still do not have viable legislation to provide for rationing should it be needed; we have no provision to respond to the inevitable economic hardships caused by the fuel crisis; and we still do not have a Federal commitment to improve mass transit facilities in our Nation's cities. What we have here is a scalpel with which the oil industry and their White House allies can dismember our environmental protection laws.

This legislation represents half of the bill the Congress considered last year. It is the half the President has said he would not veto—the other half which he has promised to veto again contained a provision which would have reduced the price of domestic crude oil in this country to tolerable levels. H.R. 14368, according to the report filed by the Interstate and Foreign Commerce Committee, seeks to consolidate those provisions from the Energy Emergency Act upon which there is substantial agreement that the White House would not exercise its veto.

While some sacrifice in the quality of our atmospheric environment is inevitable as we strive to meet our energy demands, this bill would go far to institutionalize the negation of our environmental protection laws which much of the energy industry has long sought.

Included in this bill are provisions which would sharply relax air quality standards; encourage the burning of high pollutant coal without a concomitant responsibility to install antipollution equipment; ease auto emission standards for 2 years and negate any environmental regulation which would interfere with mandated coal conversion actions.

There are provisions in the bill I would prefer to see enacted into law. For example, the bill would authorize the FEO to collect and disseminate energy data it compels the energy industry to disgorge. **[Sec. 11.]** The publication of verified and accurate energy data is long overdue and constitutes a step in the direction we should have taken a long time ago: make the energy industry responsible to the needs of the American people through their Government. But legislation to gather reliable energy data should not be held captive by what essentially is a bad bill that would gut our environmental laws and

deface our world with a cloud of pollutants. There is enough support for an energy data bill in the House, that one standing on its own merit would gain easy passage.

In addition, I do not believe there are sufficient safeguards, as argued by some, to protect the environment should the bill become law. There is no assurance in the legislation, for example, that New York City, which is a high pollution problem area would be guaranteed sufficient low sulfur fuels to meet its needs, allocating higher sulfur fuels to areas that can sustain the added pollutants without an adverse impact. Just today, John Sawhill, in a meeting with the New York delegation said he could do nothing to aid the city. Moreover, he refused to reallocate New York any domestically produced low sulfur residual oil. I believe it would be a mistake to institutionalize the power to order variances such as I have described when the people running the Federal energy program say they will not help New York solve its severe energy pollution problem.

We have succeeded so far in meeting the majority of the country's energy needs to date without this legislation, and I intend to cast my vote against its adoption because the present situaiton is far preferable to what this bill portends for New York City.

Mr. WOLFF. Mr. Chairman, I rise in opposition to H.R. 14368, "The Energy Supply and Environmental Coordination Act."

During the past several months the energy crisis has been a frustrating experience for all Americans. Few groups, however, have felt the anxieties which the environmental movement has suffered during this period, constantly being bombarded with rhetorical statements placing the blame for the energy crisis on their shoulders. Nothing could be further from the truth. For environmentalists first gave impetus to the energy conservation movement. The legislation we are considering only continues to impugn the evironmental movement.

Allowing coal to be burned without cleaning it, particularly at large urban center generating facilities, will have disastrous effects on the Nation's air quality and on the health of millions of Americans. In the New York metropolitan area, a variance to burn coal by the Consolidated Edison Co. was refused because of the deleterious impact it would have on the quality of life in the region. The decision to burn coal at power generating facilities, because of its critical impact upon the populace, should not be made by the Administrator of the Federal Energy Administration unless the coal is filtered and cleaned. **[Sec. 10, Sec. 119 CAA.]**

However, the most disturbing aspect of the legislation we now have under consideration involves the section **[Sec. 6]** to relax the provisions of the National Environmental Policy Act of 1969. When the House considered the Alaskan Pipeline measure, several months ago, a hole was made in the wall of the dam. Now, we are witnessing legislation which would open the floodgates to NEPA. Again, our environment is to suffer unnecessarily for our energy shortgages. Several months ago, when the Consolidated Edison Co. in New York applied to the New York City Environmental Protection Agency for a variance to burn coal at its Ravenswood facility, an environmental impact analysis was carried out, involving Federal, State, and local authorities. There was no need to suspend NEPA, but only carry out its provisions swiftly and effectively. This same action can be done for all

future variances and conversions involving clean air standards and the National Environmental Policy Act. Consequently, I see no reason for the inclusion of this section in H.R. 14368.

I am also concerned that the legislation we are considering may undermine the decision of the Supreme Court in Sierra Club against Ruckleshaus. According to the majority of the Court, further degradation of air quality in areas subject to standards was contrary to the Clean Air Act of 1970. By suspending provisions of the Clean Air Act, we may actually be in conflict with the principles of the legislation we are amending.

The need to maximize our available fuel resources will not be aided by the provisions of H.R. 14368, which would suspend portions of the Clean Air Act. However, the Nation's fuel supplies could be increased by the continued concerted efforts aimed at energy conservation, efforts to maximize clean sources of energy, action which environmentalists have been proposing for years.

Mr. BROYHILL of North Carolina. Mr. Chairman, I rise in support of H.R. 14368, the Energy Supply and Environmental Coordination Act of 1974. I have spoken before on the floor of the House in support of many of the provisions of this legislation. Enactment of legislation to deal with the energy shortages our Nation is facing is long overdue. This bill comes before us today approximately 6 months after the Congress first began considering legislation to deal with energy shortages.

In the consideration and final passage of such legislation, we have encountered innumerable controversies, delays, and differences of opinion. But the problem which this legislation seeks to deal with is still with us and we must still provide some solutions so that our Nation can get through the years ahead with an adequate supply of energy to meet our needs.

After the President vetoed the recently passed Energy Emergency Act, the House Interstate and Foreign Commerce Committee began consideration of a new vetoed bill. In the final consideration of this legislation, the committee divided the provisions into two separate bills. The bill before us today is one such bill and, I feel, contains the less controversial language to deal with energy shortages.

This bill provides several amendments to the Clean Air Act. It provides temporary suspension of air emission standards under the Clean Air Act to stationary sources which are unable to obtain clean fuels. These suspensions apply until June 30, 1975, or one year after enactment, whichever is earlier. If the Environmental Protection Agency determines that clean fuels are available, or if there is a significant risk to public health, suspension of standards would not be allowed. **[Sec. 2, Sec. 119(a) CAA.]**

This suspension of standards would provide some relief from the shortage of fuels, particularly fuels of low-pollution characteristics, which may make it impossible for many fuel burning stationary sources to comply with existing requirements.

The bill also provides exemption from air pollution requirements until January 1, 1979, for stationary sources which convert to coal as a major source of fuel. **[Sec. 119(b) CAA.]** This exemption may be overridden if conversion to coal results in significant threats to health. This section should result in the opening of new coal mines by sustaining demand for coal, and will tend to shift supplies of natural

gas and oil to the production of gasoline and home heating oil. If necessary, a coal allocation system would be provided for coal users. [Sec. 10.]

Another important section of this bill deals with automobile emissions. [Sec. 4, Sec. 202 CAA.] It provides that emission standards for 1975 model cars would continue during the 1976 model year. A second year of postponement is also authorized if the Administrator of EPA finds it is necessary to prevent a significant increase in fuel use. This section attempts to strike a balance between continued development of a clean automobile engine and the technological problems associated with achieving that goal particularly during a period of critical fuel shortage. Passage of this section, which has previously been approved by the House, is necessary so that automobile manufacturers will know the emission standards for 1975 model cars which are soon to go into production.

The bill also provides for reporting of energy information from those engaged in the production, processing, refining, transportation by pipeline, or distribution of energy resources. [Sec. 11.] The Federal Energy Administration is directed to develop, within 30 days of enactment, an accurate measure of domestic reserves, production, imports and inventories of oil, natural gas, and coal. In addition, industry information must be updated every 90 days to insure timeliness and accuracy of energy information. This section should insure that the Federal Energy Administration and the Congress have the necessary information to evaluate energy problems and will be able to take action based on accurate and complete information.

Congressional passage of this important energy legislation is long overdue. I urge my colleagues to act swiftly to approve this badly needed measure.

Mr. Koch. Mr. Chairman, the Energy Supply and Environmental Coordination Act, now on the floor, would be disastrous for the environment of our cities.

The bill does have some good provisions—requiring reports from persons engaged in the production and distribution of energy resources, and directing the Federal Energy Administration to conduct conservation studies and to publish reports on energy supplies.

However, the sections which would allow pollution of the atmosphere, to a dangerous extent in many cities, including New York, far outweigh the helpful portions of the bill.

The environmentally destructive provisions which I am talking about would temporarily suspend stationary emission limitations under the Clean Air Act, such as smoke from factories; would encourage, and in some cases require, the burning of coal, potentially extremely harmful to the health of many persons in cities already burdened with heavy air pollution, including New York; would suspend stronger automobile emission standards planned for 1976; and would suspend for 1 year actions under the National Environmental Policy Act.

This bill would in a gross, adverse way affect the health of our citizens by further impairing the quality of the very air we breathe. This is neither conscionable nor necessary. Conservative of energy need not conflict with environmental safeguards. This bill dumps the safeguards at the public's expense, and I must therefore vote against it.

Mr. RANDALL. Mr. Chairman, I support H.R. 14368, the Energy Supply Act of 1974. I shall be brief in my remarks. One of the most important provisions of this bill is section 11 on energy information reports. As I have said many times, while we may have suffered from an Arab oil embargo, we continue to suffer today from an energy information embargo. H.R. 14368 should go quite a ways toward correcting that problem. As I read the bill, reports may be required by the Federal Energy Administrator even by means of subpena if necessary to bring in all relevant books, records, papers, and other documents relating to domestic reserves and also all production reports and inventories of crude oil, residual fuel oil, refined petroleum products, and natural gas.

It is required that these reports be furnished for each calendar quarter. If there is no other purpose, then this bill deserves prompt enactment in order that we may know, instead of having to continue to guess, about such things as refinery capacity, stocks on hand, how much product is in the pipeline, how much is in tanks above ground and all of the many other necessary statistics needed to prepare a national energy plan or policy.

Of course, we should also applaud the Committee on Interstate and Foreign Commerce for providing in this measure a sensible suspension of the requirement for devices that must be attached to cars to control emission of pollutants.

In addition, there is an important section on coal conversion [Sec. 10] and a most important section on a fuel economy study [Sec. 9, Sec. 213 CAA.] All in all, H.R. 14368 is a bill which has merit; it provides many benefits, and as far as I can determine it is without any detriments. About the only apology that has to be made is that this legislation should have been passed much earlier in this session.

AMENDMENT OFFERED BY MR. WYMAN

Mr. WYMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Wyman: On page 59 insert immediately after line 13 the following: I. TEMPORARY SUSPENSION IN DESIGNATED AREAS

(a) Section 203 of the Clean Air Act (42 U.S.C. 1857f–2) is amended by adding at the end thereof the following new subsection:

"(d)(1) During and after the period of partial suspension of emission standards (as defined in paragraph (3)(A))—

"(A) it shall be unlawful for any person to register within an area designated in paragraph (3)(B) a new motor vehicle or new motor vehicle engine which is manufactured during the period of partial suspension of emission standards and which is not labeled or tagged as covered by a certificate of conformity under this part, and

"(B) no State shall permit any person to register a motor vehicle in violation of subparagraph (A).

"(2) During the period of partial suspension of emission standards—

"(A) subsections (a) (1) and (4) of this section shall be inapplicable;

"(B) it shall be unlawful for any manufacturer to sell, offer to sell, or introduce or deliver for introduction into commerce (or for any person except as provided in regulations of the Administrator, to import into the United States), any new motor vehicle or new motor vehicle engine which is labeled or tagged as covered by a certificate of conformity unless such new motor vehicle or new motor vehicle engine is covered by a certificate of conformity issued (and in effect) under this part, or unless such new motor vehicle or new motor vehicle engine was manufactured prior to the period of partial suspension.

"(C) subsection (a)(3) shall not apply to any motor vehicle or engine attached thereto which is registered outside an area described in paragraph (3)(B) of this subsection;

"(D) it shall be unlawful for any manufacturer (i) to sell or lease any new motor vehicle or new motor vehicle engine which is labeled or tagged as covered by a certificate of conformity unless such manufacturer has complied with the requirements of sections 207 (a) and (b), or (ii) to fail to comply with subsection (c) or (d) of section 207 insofar as such sections apply to motor vehicles or motor vehicle engines to which subsection (a)(1) of this section applies or applied or which are labeled or tagged as covered by a certificate of conformity;

"(E) it shall be unlawful for any dealer to sell any new motor vehicle or new motor vehicle engine which is not labeled or tagged as covered by a certificate of conformity to an ultimate purchaser unless such purchaser provides such dealer with a signed statement that such purchaser will not register such vehicle in an area designated under paragraph (3)(B), and

"(F) it shall be unlawful for any ultimate purchaser to provide a statement described in subparagraph (E) knowing such statement to be false.

"(3)(A) For purposes of this subsection and section 209(C) the term 'period of partial suspension of emission standards' means the period beginning sixty days after enactment and ending on the latter of September 30, 1977, or 12 months after the date on which the President determines that there is no longer any significant shortage of petroleum fuels in the United States. Any such determination shall be published in the Federal Register.

"(B) Within sixty days after the date of enactment of this subsection and annually thereafter, the Administrator shall designate, subject to the limitations set forth in this subparagraph, geographic areas of the United States in which there is significant auto emissions related to air pollution. The Administrator shall not designate as such area without subsequent legislative authorization, any part of the United States outside the following air quality control regions as defined by the Administrator as of the date of enactment of this paragraph:

"(i) Phoenix-Tucson, intrastate.

"(ii) Metropolitan Los Angeles, intrastate.

"(iii) San Francisco Bay area, intrastate.

"(iv) Sacramento Valley, intrastate.

"(v) San Diego, intrastate.

"(vi) San Joaquin Valley (California), intrastate.

"(vii) Hartford-New Haven (Connecticut)-Springfield (Massachusetts), interstate.

"(viii) National Capital (District of Columbia-Maryland-Virginia), interstate.

"(ix) Metropolitan Baltimore, intrastate.

"(x) New Jersey-New York-Connecticut, interstate.

"(ix) Metropolitan Philadelphia (Pennsylvania-New Jersey and Delaware), interstate.

"(xii) Metropolitan Chicago (Illinois and Indiana), interstate.

"(xiii) Metropolitan Boston, intrastate.

For purposes of this subparagraph, the term 'significant auto emissions related air pollution' means the persons of air pollutants from automobile emissions at such levels and for such durations as to cause a demonstrable and substantial adverse impact upon public health.

"(C) For purposes of this subsection and section 209(c) a motor vehicle shall be considered to be registered in a geographic area—

"(i) in the case of a motor vehicle registered by an individual if the individual's principal place of abode is in that area, or

"(ii) in the case of a motor vehicle registered by a person other than an individual, if the State of registration determines that such vehicle will be principally operated in such area.

"(D) Each State shall not later than sixty days following enactment of this Act, submit to the Administrator a plan for implementing subsection (d)(1)(B) of this section. Such plan shall contain provisions which give assurance that such State has one or more adequately financed agencies with sufficient legal authority to enforce such subsection (d)(1)(B) as determined in accordance with regulations of the Administrator."

(b)(A) Section 202(a) of the Clean Air Act is amended by inserting "and section 203(d)" after "subsection (b)".

(B) (1) Section 203(a) of such Act is amended by striking out "The following" and inserting in lieu thereof "Except as otherwise provided in subsection (d) of this section, the following:".

(2) Section 203(b)(2) of such Act is amended by inserting "or (d)(2)(A)" after "subsection (a)".

(C) Section 204(a) of such Act is amended by inserting before the period the following: "or section 203(d)".

(D) Section 205 of such Act is amended by inserting "(a)" after "SEC. 205.", by inserting "or paragraph (1)(A) or (2) of section 203(d)" after "section 203(a)", and by adding at the end of such section the following new subsection:

"(b) If a State fails to submit a plan under section 203(d) or if the Administrator determines (after notice and opportunity for hearing) that such State is not adequately enforcing such a plan, then such State (including any political subdivision thereof) shall lose its entitlement to and may not thereafter receive any Federal grant or loan assistance under this Act or under the Federal Water Pollution Control Act."

(E) Section 206(b)(1) of such Act is amended by striking out "being manufactured by a manufacturer" and inserting in lieu thereof "which are being manufactured by a manufacturer and which are covered by a certificate of conformity".

(F) The second sentence of section 209(a) of such Act is amended by striking out "No State" and inserting in lieu thereof "Except as provided in sections 203(d)(1)(B) and 203(a), no State".

(G) Section 209(c) of such Act is amended by striking out "Nothing" and inserting in lieu thereof "(1) Except as provided in paragraph (2) of this subsection, nothing"; and by adding at the end thereof the following new paragraph:

"(d) During the period of partial suspension of emission standards (as defined in section 203(d)(3)(A)—

"(2) no State may (in an applicable implementation plan or otherwise) adopt or attempt to enforce any standard relating to the control of emissions of motor vehicles (including engines attached thereto) registered outside of any area designated under section 203(d)(3)(B); and

"(2) no State may (in an applicable implementation plan or otherwise) adopt or attempt to enforce any law or regulation prohibiting any person from removing or rendering inoperative any device or element of design installed in compliance with regulations under this title in or on a motor vehicle (including any engine attached thereto) which is registered outside of any area designated under section 203(d)(3)(B), and

"(3) the Administrator may not promulgate any implementation plan which contains a provision prohibited by paragraph (1) or (2)."

(c) Willful and deliberate violation of section 203(d)(1)(A) of the Clean Air Act, as amended by subsection (a) of this amendment, shall be punishable by a fine of up to $1,000, or imprisonment up to one year, or both.

(d) Motor vehicles registered in areas other than those designated in paragraph (3)(B) herein on the date of expiration of this amendment shall not be required to be retrofitted with emissions control devices or to comply with emissions control standards or regulations issued pursuant to the Act of 1970 (42 U.S.C. 1857f) as amended.

(e) This amendment shall take effect sixty days after passage.

POINT OF ORDER

Mr. STAGGERS. Mr. Chairman, I make a point of order against the amendment.

Mr. Chairman, it is not germane to the bill. The amendment offered by the gentleman from New Hampshire (Mr. Wyman) is not germane because:

First, it amends **sections 203, 204, 205, 206, and 209** of the Clean Air Act, provisions which are nowhere else amended by this bill (H.R. 14368).

Second, it, in effect, amends the Federal Water Pollution Control Act, by providing for termination of State grant eligibility under that act, if the State fails to take certain actions under this amendment.

Clearly this is not germane. Moreover, it discusses a subject matter clearly within the jurisdiction of the Public Works Committee.

Third, the bill would limit State authority to register motor vehicles, a subject which is not addressed in this bill in any way. It also deals with Federal and State authority to adopt and enforce provisions relating to in-use vehicles, a subject which is not addressed in this bill in any way. It also deals with grant provisions which are not amended in any way by H.R. 14368. It subjects ultimate purchasers to regulation for the first time under the Clean Air Act and no provision of this bill refers to ultimate purchasers of motor vehicles.

Mr. WYMAN. The gentleman is essentially trying to say that an amendment that relates to the standards or emissions controls on automobiles in a time and under a title that relates to clean air is not germane. I think it is so obvious that it is germane that the point of order should be overruled.

The CHAIRMAN [Mr. DORN]. The Chair is prepared to rule.

The gentleman from West Virginia (Mr. Staggers) makes the point of order that the amendment offered by the gentleman from New Hampshire (Mr. Wyman) is not germane to the committee substitute for H.R. 14368.

The Chair has examined the amendment and is aware that it provides that States shall lose their entitlements to Federal grants under the Clean Air Act and under the Water Pollution Control Act for failure to comply with the provisions of the amendment.

While the committee substitute does amend several sections of the Clean Air Act to permit defined and limited variances from certain diverse provisions of that act, in order to coordinate the questions of energy supplies and environmental protection, the committee substitute does not affect entitlements under the Water Pollution Control Act, a matter within the jurisdiction of the Committee on Public Works.

As recently as December 14, 1973, when the Committee of the Whole was considering the Energy Emergency Act, Chairman Bolling ruled that to a proposition temporarily suspending certain requirements of the Clean Air Act, an amendment suspending other provisions of all other environmental protection laws was not germane.

For these reasons, the Chair feels that the amendment is not germane to the committee substitute and sustains the point of order made by the gentleman from West Virginia.

Mr. STAGGERS. Mr. Chairman, I move to strike the requisite number of words.

I wish to assure the gentleman from New Hampshire that when we do consider the Environmental Protection Act his provisions will be considered, when this bill is taken up again. I can assure the gentleman of that.

Mr. WYMAN. Mr. Chairman, if the gentleman will yield on his time, I would simply like to say it will take me about 3 minutes to strike out from the amendment in the form in which it has been proposed the sanctions that relate to the objectionable features of which the Chairman just spoke, and the gentleman from New Hampshire intends to resubmit in the next few minutes the amendment without those features.

Mr. STAGGERS. The gentleman still has time, and I would like to say we would have to oppose the amendment. But I wish to assure the

gentleman he will be given every fair treatment in the committee if he will come before the committee to present his views. There must be a new bill extending the authority of the Clean Air Act before June 30. I think if the gentleman will present his views before the committee, that is the proper time, when the hearings can be held and we can evaluate the situation, and the full membership of the committee will have a chance to hear the gentleman and he can make his points. I believe they will be given every consideration.

I do not believe this is the proper place to offer those amendments because I believe every member of our committee would be impelled to vote against and work against the gentleman's amendment. I believe if the gentleman will come at the proper time and present them in the proper way he will receive a sympathetic hearing from the members of the committee.

Mr. WYMAN. If the gentleman will yield further. I can assure the gentleman first I do not represent the automobile industry. All I am trying to do, as the gentleman knows and has known for some months now, is to get out something on this before the industry goes into the 1975 production in order to save millions of gallons of gasoline and hundreds of millions of dollars of cost to the purchasers and operators of automobiles in this country.

I think the gentleman is taking a position here that appears kindly and courteous but it seems to be contrary to the interests of the consumers of this country and contrary to energy crisis needs at this time. I will endeavor to make the corrections to the amendment in the shortest possible time.

Mr. STAGGERS. Mr. Chairman, in response to the gentleman I will say I do not think the House will accept the amendment and I think the gentleman will be just delaying progress on this bill. We are trying to be helpful to the country and the automobile industry and to the gentleman. We wish to do it in an orderly way.

The gentleman will have an opportunity to appear before our committee.

I would say this, when this part of the bill was broken away from the other parts, we agreed to oppose all amendments to this bill. I hope we can do this in order to get it by and down to the White House in the next day or so.

Mr. WYMAN. Mr. Chairman, if the gentleman will yield. I do not think we ought to be guided by what we think the other body will do. We know that the other body is under the domination of a point of view that accepts no amendment in this field whatsoever.

I am willing to submit the question to the House today. I believe that the House will adopt the amendment and that we ought to insist on it in conference.

Mr. STAGGERS. I would say we have voted it down twice and it is unlikely to get through now.

Mr. WYMAN. We have not considered this precise amendment in this House. It is a more thorough amendment and more carefully considered and worded than the one presented in December.

Mr. STAGGERS. I would like to say that if there is an amendment adopted, it would hold up this bill for some time.

Mr. ROUSSELOT. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

Fifty-eight Members are present, not a quorum. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 199]

Alexander	Giaimo	Patman
Anderson, Ill.	Grasso	Pepper
Barrett	Gray	Pickle
Blatnik	Haley	Podell
Breaux	Hansen, Wash.	Rees
Brown, Calif.	Harsha	Reid
Buchanan	Hébert	Riegle
Burke, Calif.	Hillis	Roberts
Carey, N.Y.	Howard	Robison, N.Y.
Chisholm	Hudnut	Roncallo, N.Y.
Clark	Kazen	Rooney, N.Y.
Clausen, Don H.	Landrum	Rose
Conyers	Long, La.	Ruppe
Culver	Long, Md.	Stanton, James V.
Davis, Ga.	McFall	Stokes
de la Garza	Martin, N.C.	Stubblefield
Diggs	Mathis, Ga.	Teague
Drinan	Milford	Thompson, N.J.
Esch	Minshall, Ohio	Whitten
Findley	Murphy, Ill.	Williams
Fulton	Myers	
	Passman	

Accordingly the committee rose: and the Speaker having resumed the chair, Mr. Dorn, chairman of the Committee of the Whole House on the State of the Union, reported that that committee having had under consideration the bill H.R. 14368 and finding itself without a quorum he had directed the Members to record their presence by electronic device when 370 Members recorded their presence, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The committee resumed its sitting.

AMENDMENT OFFERED BY MR. WYMAN

Mr. WYMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Wyman: On page 59 insert immediately after line 13 the following: I. Temporary Suspension In Designated Areas

(a) Section 203 of the Clean Air Act (42 U.S.C. 1857f–2) is amended by adding at the end thereof the following new subsection:

"(d) (1) During and after the period of partial suspension of emission standards (as defined in paragraph (3) (A)—

"(A) it shall be unlawful for any person to register within an area designated in paragraph (3) (B) a new motor vehicle or new motor vehicle engine which is manufactured during the period of partial suspension of emission standards and which is not labeled or tagged as covered by a certificate of comformity under this part, and

"(B) no State shall permit any person to register a motor vehicle in violation of subparagraph (A).

"(2) During the period of partial suspension of emission standards

"(A) subsection (a) (1) and (4) of this section shall be inapplicable;

"(B) it shall be unlawful for any manufacturer to sell, offer to sell, or introduce or deliver for introduction into commerce (or for any person except as provided in regulations of the Administrator, to import into the United States), any new motor vehicle or new motor vehicle engine which is labeled or tagged as covered by a certificate of conformity unless such new motor vehicle or new motor vehicle engine is covered by a certificate of conformity issued (and in effect) under this part, or unless such new motor vehicle or new motor vehicle engine was manufactured prior to the period of partial suspension;

"(C) subsection (a)(3) shall not apply to any motor vehicle or engine attached thereto which is registered outside an area described in paragraph (3)(B) of this subsection;

"(D) it shall be unlawful for any manufacturer (i) to sell or lease any new motor vehicle or new motor vehicle engine which is labeled or tagged as covered by a certificate of conformity unless such manufacturer has complied with the requirements of sections 207 (a) and (b), or (ii) to fail to comply with subsection (c) or (d) of section 207 insofar as such sections apply to motor vehicles or motor vehicle engines to which subsection (a)(1) of this section applies or applied or which are labeled or tagged as covered by a certificate of conformity;

"(E) it shall be unlawful for any dealer to sell any new motor vehicle or new motor vehicle engine which is not labeled or tagged as covered by a certificate of conformity to an ultimate purchaser unless such purchaser provides such dealer with a signed statement that such purchaser will not register such vehicle in an area designated under paragraph (3)(B), and

"(F) it shall be unlawful for any ultimate purchaser to provide a statement described in subparagraph (E) knowing such statement to be false.

"(3)(A) For purposes of this subsection and section 209(C) the term 'period of partial suspension of emission standards' means the period beginning sixty days after enactment and ending on the later of September 30, 1977, or 12 months after the date on which the President determines that there is no longer any significant shortage of petroleum fuels in the United States. Any such determination shall be published in the Federal Register.

"(B) Within sixty days after the date of enactment of this subsection and annually thereafter, the Administrator shall designate, subject to the limitations set forth in this subparagraph, geographic areas of the United States in which there is significant auto emissions related air pollution. The Administrator shall not designate as such area without subsequent legislative authorization, any part of the United States outside the following air quality control regions as defined by the Administrator as of the date of enactment of this paragraph;

"(i) Phoenix-Tucson, intrastate.

"(ii) Metropolitan Los Angeles, intrastate.

"(iii) San Francisco Bay Area, intrastate.

"(iv) Sacramento Valley, intrastate.

"(v) San Diego, intrastate.

"(vi) San Joaquin Valley (California) intrastate.

"(vii) Hartford-New Haven (Connecticut)-Springfield (Massachusetts), intrastate.

"(viii) National Capital (District of Columbia-Maryland-Virginia), interstate.

"(ix) Metropolitan Baltimore intrastate.

"(x) New Jersey-New York-Connecticut, interstate.

"(xi) Metropolitan Philadelphia (Pennsylvania-New Jersey and Delaware), interstate.

"(xii) Metropolitan Chicago (Illinois and Indiana), interstate.

"(xiii) Metropolitan Boston, intrastate.

For purposes of this subparagraph, the term 'significant auto emissions related air pollution' means air pollutants from automobile emissions at such levels and for such durations as to cause a demonstrable and substantial adverse impact upon public health.

"(C) For purposes of this subsection and section 209(c) a motor vehicle shall be considered to be registered in a geographic area—

"(i) in the case of a motor vehicle registered by an individual if the individual's principal place of abode is in that area, or

"(ii) in the case of a motor vehicle registered by a person other than an individual, if the State of registration determines that such vehicle will be principally operated in such area.

"(D) Each State shall not later than sixty days following enactment of this Act, submit to the Administrator a plan for implementing subsection (d)(1)(B) of this section. Such plan shall contain provisions which give assurance that such State has one or more adequately financed agencies with sufficient legal authority to enforce such subsection (d)(1)(B) as determined in accordance with regulations of the Administrator."

(b)(A) Section 202(a) of the Clean Air Act is amended by inserting "and section 203(d)" after "subsection (b)".

(B)(1) Section 203(a) of such Act is amended by striking out "The following" and inserting in lieu thereof "Except as otherwise provided in subsection (d) of this section, the following:".

(2) Section 203(b)(2) of such Act is amended by inserting "or (d)(2)(A)" after "subsection (a)".

(C) Section 204(a) of such Act is amended by inserting before the period the following: "or section 203(d)".

(D) Section 205 of such Act is amended by inserting "(a)" after "SEC. 205.", by inserting "or paragraph (1)(A) or (2) of section 203(d)" after "section 203(a)", and by adding at the end of such section the following new subsection:

(E) Section 206(b)(1) of such Act is amended by striking out "being manufactured by a manufacturer" and inserting in lieu thereof "which are being manufactured by a manufacturer and which are covered by a certificate of conformity".

(F) The second sentence of section 209(a) of such Act is amended by striking out "No State" and inserting in lieu thereof "Except as provided in sections 203(d)(1)(B) and 203(a), no State".

(G) Section 209(c) of such Act is amended by striking out "Nothing" and inserting in lieu thereof "(1) Except as provided in paragraph (2) of this subsection, nothing"; and by adding at the end thereof the following new paragraph:

"(d) During the period of partial suspension of emission standards (as defined in section 203(d)(3)(A)—

"(2) no State may (in an applicable implementation plan or otherwise) adopt or attempt to enforce any law or regulation prohibiting any person from removing or rendering inoperative any device or element of design installed in compliance with regulations under this title in or on a motor vehicle (including any engine attached thereto) which is registered outside of any area designated under section 203(d)(3)(B), and

"(3) the Administrator may not promulgate any implementation plan which contains a provision prohibited by paragraph (1) or (2)."

(c) Willful and deliberate violation of section 203(d)(1)(A) of the Clean Air Act, as amended by subsection (a) of this amendment, shall be punishable by a fine of up to one thousand ($1,000) dollars, or imprisonment up to one year, or both.

(d) Motor vehicles registered in areas other than those designated in paragraph (3)(B) herein on the date of expiration of this amendment shall not be required to be retrofitted with emissions control devices nor to comply with emissions control standards or regulations issued pursuant to the Act of 1970 (42 U.S.C. 1857f) as amended.

(e) This amendment shall take effect sixty days after passage.

Mr. WYMAN. Mr. Chairman and members of the committee, this is the same amendment to which a point of order was made a little earlier, but without the sanctions that were specified in the original amendment in the interest of compelling State cooperation.

I have caused to be introduced into the Record which is beneath the seat of each of the Members at page E2648, a fact sheet on what this amendment proposes, with relation to objections that may be made to it, some of which are more hysterical than real.

Mr. Chairman, my amendment would essentially remove the requirement of emission controls on automobiles registered to residents of the white areas shown on this map of the United States. This is most of the Nation. The Environmental Protection Administrator

would be authorized to designate the geographical limits of the red areas, and to go outside of those red areas in the instance of residents who live where most of their driving is done within the red area. All persons who reside in those areas would continue to be required to have automobiles equipped with emissions controls.

What would this mean in terms of hard dollars and cents? It would mean that approximately 70 percent of all automobiles in this country manufactured in the years 1975, 1976, and 1977—because this amendment continues until September 1977—would not have to have emissions controls. It would save billions of gallons of gasoline effective almost immediately and hundreds of millions in new car costs.

It would also empower the automobile dealers of this country to modify automobiles in inventory, or that are sold or belong to residents of the white, uncontrolled areas, to increase their gasoline mileage.

You may hear here today that if you tamper with a 1973 or 1974 model, it is likely to increase its fuel consumption. There is a $10,000 fine under the existing law on a dealer who tries to do this. But if you are going to have it done on a new car or done then knowledgeably it should be done by a dealer who has the equipment and who has the necessary handbooks and guidelines to follow from his manufacturer. America's dealers want to be allowed to do this in the cause of solving the energy crisis before us, particularly as it relates to gasoline, as well as the sticker mileage improvement involved.

Let me say to the members of the committee that we had better do this today because if anything should happen, and an oil embargo should go into effect again, and the people start queing up in gasoline lines in America, those who vote against doing this now, today, are going to take the rap, and they are going to deserve the rap in the public's mind because they will be responsible for a gas shortage that can be avoided in America if we take off the emission controls on cars where there is no earthly need for them.

The gentleman from Florida (Mr. Rogers) has continued to say that there are 66 cities and places outside of this area on the map with a pollution problem from automobile emissions. The fact is that the problem is not that big. This is not to urge Members to think that all of what comes out of the tailpipe of a car is pure and clean, because it is not. It is a fact that the automotive industry in America is trying to improve engines so as to maximize gas mileage and reduce emissions. But there is no such health-related problem of any significant proportions in America in the white areas, and there is no earthly justification, my friends, for requiring cars to cost hundreds of dollars more, and have a fuel penalty that the Environmental Protection Administration admits is at least 1 gallon in every 10 on the average across the country to people in this country who are residents of areas with no actual automobile emissions related air pollution.

This sheet which is before the Members in the Congressional Record points out certain facts about this amendment. I hope I have made them clear. I think the Members are familiar with this amendment. Members should also understand that the automotive industry can live with this amendment, and with the two-car policy, and that it is not a meaningful burden upon the automobile industry. But the industry has got to have the answer before it goes into production for the 1975 models, and therefore we should adopt this amendment at this time.

Mr. Rogers. Mr. Chairman, I rise in opposition to the amendment.

I do not think it is necessary for us to go through all of this again. The House has twice turned down this amendment, even at a time when all of us were under very heavy emotional pressures, when there were lines before the filling stations. I think the House then made an intelligent judgment that we must strive for our continued effort to clean up the air in this country, and that the provisions of the bill before us strikes a proper balance between energy needs and clean air.

Mr. Gude. Mr. Chairman, I commend the gentleman on his statement. He is looking at this matter very carefully. As he has pointed out, the House has twice looked at this matter and rejected this idea. I know the gentleman is well intentioned in offering this amendment, but I hope that the House will again act wisely.

As you recall, the House defeated this proposal by a record vote of 210 to 180. I sincerely hope that my colleagues will again move to defeat this proposal.

The arguments on this matter have not changed since December. As I mentioned then, Russell Train, appearing before the House Republican Task Force on the Environment, presented clear evidence that, in EPA tests, when emissions control devices were removed from small automobiles, it caused an increase in fuel consumption—not a savings, as the proponents of this amendment would have one believe—and there is considerable evidence that removal of the devices may well have a similar effect on larger cars.

Additional solid evidence, which argues strongly against the kind of "two-car" emissions standards which would be set up under this amendment, is presented in a report issued by the Aerospace Corp. in April 1973. Aerospace, under contract by EPA to study this very type of proposal, stated that even the auto industry was opposed to this type of system. Aerospace reported on numerous problems such a system would case. They range from its effects on air quality to the problems it would create for auto manufacturers, parts manufacturers and dealers, and mechanics. The problems under such a system would be enormous—and the benefits nonexistent. In light of these facts, I must urge very strongly that the amendment be defeated. There is absolutely no assurance that it would save fuel. Indeed, all indications are to the contrary. If we wish to save fuel, we should press ahead with timely implementation of the full emissions standards, which tests indicate will result in fuel savings of 10 percent and more. This figure, incidently, was reached by General Motors, and has been substantiated by further EPA testing.

If we accept this proposal, there is the absolute certainty that air quality—and, therefore, the public health—will suffer greatly. Administration of a program of this nature would be a true nightmare. I urge the defeat of this amendment.

Mr. Rogers. I thank the gentleman for his comments. I agree with what he has said. It would be really a tremendous step backward to adopt such an amendment.

First of all, the administration itself would oppose this amendment. It is opposed by EPA and by the White House. All of the major automobile companies do not support this amendment. Ford and General Motors representatives have both opposed it.

Mr. WYMAN. Did the gentleman say that the White House opposes this amendment?

Mr. ROGERS. Yes.

Mr. WYMAN. Mr. Chairman, I challenge that statement.

Mr. ROGERS. It was before the committee, and the gentleman can look at the record.

Mr. WYMAN. If the gentleman will yield further, the gentleman knows that my amendment was never before his committee, nor was I granted a hearing before his committee.

Mr. ROGERS. We have assured the gentleman from New Hampshire that he could come before the committee in June with his idea.

Mr. DINGELL. The Administrator of EPA, speaking on behalf of the administration, opposed this bill. The Council on Environmental Quality opposed this amendment. Mr. Sawhill opposed the bill and stated it was not necessary; it was undesirable; and said it would probably not save any gas.

Mr. ROGERS. It is so that they do not support it. Furthermore, another reason for opposing this amendment now is that the automobile companies are ready to move to clean up the air. The initial tests, I think the House would like to know—and this is fairly important—show that on the 1975 model in the 4,500-pound class there has been nearly a 26-percent improvement over 1973 and 1974 models and, similarly, another car in the 5,500-pound class has shown better than 26-percent increase in mileage.

Now to prevent them from going ahead and taking these steps as called for by the law, which will—in 1975—increase mileage and at the same time will help clean up the air, does not make sense.

Mr. DINGELL. Let me read what the Deputy Director, now the Director, of the Federal Energy Office, had to say. He said, referring to removal of emissions control devices from 1970 to 1974 cars, if made by competent mechanics, and in most instances they will not be, it could theoretically result in a 4-percent fuel economy improvement for those model years. He went on to say, and I am now quoting directly:

> However, exhaust emissions do not increase as engines are retuned for better fuel economy and overall hydrocarbon emissions would increase one-sixth, 18 percent, and carbon monoxide by one-quarter, 25 percent. This may be too high a price to pay for better fuel economy, and I think it is.

Mr. ROGERS. Mr. Chairman, may I say we have just so much clean air in this great old world of ours. We know what has been happening. This Congress has made the judgment to help clean up the air. Now to take a step backward at this time when the automobile companies are perfecting and improving the mileage and when the energy situation has eased simply does not make sense.

We cannot stop now in continuing our efforts to clean up the air, particularly when we are almost over this business of the fuel penalty in our cars. The tests on 1975 automobiles are bringing in their first steps up to a 25-percent increase in gasoline mileage, and to do as the gentleman proposes at this time would build in the very worst penalty.

Mr. YOUNG of Illinois. Mr. Chairman, I associate myself with the remarks of the gentleman from Florida.

I also would like to point out if any such amendment were adopted it would create all types of enforcement problems, and it would create havoc among the dealers who are in areas which are supposed to be

full of air pollution, and it would create problems for the State authorities in trying to enforce motor vehicle laws.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

It is with some reluctance I rise to oppose the amendment offered by my good friend, the gentleman from New Hampshire (Mr. Wyman). I know he offers the amendment in the best of good faith and I am satisfied he is sincere in the thought that it would be helpful in the problem we face with regard to energy.

In point of fact, Mr. Chairman, the map submitted by Mr. Wyman does not reflect the areas which would be affected by the amendment but rather indicates only the areas where the worst of the air pollution happens to exist in the country.

In real point of fact the best arguments against the Wyman amendment, which I am satisfied my good friend does offer in the best of good faith, were submitted to me in a statement by the National Realty Committee, Inc., which is a national organization of realtors who sent a communication to the Commerce Committee in opposition to the amendment. Let me read some parts of this communication.

The portion reads as follows:

NATIONAL REALTY COMMITTEE, INC.,
Washington, D.C., April 23, 1974.

Hon. JOHN D. DINGELL,
House of Representatives, Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN DINGELL: The National Realty Committee, Inc. thought that the enclosed letter from Al Walsh, President, to Chairman Harley O. Staggers of the House Committee on Interstate and Foreign Commerce indicating the problems that passage of the Wyman proposal (H.R. 13120) would create for new real estate development in your District would be of considerable interest to you. Please let us know if we can be of any assistance.

Sincerely,

JAMES A. SHARP,
Staff Counsel.

NATIONAL REALTY COMMITTEE, INC.,
Washington, D.C., April 5, 1974.

Re H.R. 13120.

Hon. HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN STAGGERS: I regret that, due to the Committee's full schedule this past week, a representative of the National Realty Committee, Inc. ("NRC") was not able to appear in person before the Committee to express the NRC's views on H.R. 13120, the Wyman Amendment to the Clean Air Act of 1970. However, the NRC believes that it is important to bring to the attention of the committee, and of the Congress, the staggering implications of the Wyman Amendment for the future growth of the United States, and for land use and development in particular. Accordingly, I would like to request the Committee to accept this letter as the testimony of the NRC and to incorporate these remarks into the hearing record compiled by the Committee.

The NRC is a business league of several hundred organizations involved, directly or indirectly, in the real estate industry throughout the United States, including real estate owners, investors, developers, and related organizations and institutions. The NRC supports the goals of the Clean Air Act and believes that it is possible to protect and enhance the quality of our nation's air resources without imposing disproportionate economic or social disruption upon any sector of our economy.

As set forth in detail below, the effect of the proposed Wyman Amendment will be substantially to increase air pollution from vehicular emissions in vir-

tually every populated region in the United States. However, the ambient air standards adopted by the Environmental Protection Agency must still be reached by 1975, or, where an extension has been granted, by 1977. Particularly in urban areas, the increased pollutant emissions per vehicular mile which must necessarily result from the Wyman Amendment will require reducing vehicle miles traveled. This, in turn, will require more stringent transportation control plans and indirect source regulations than are currently proposed, thus imposing additional widespread limitations on otherwise desirable growth and development. Thus, construction projects which pump billions of dollars into the nation's economy and provide thousands of jobs will be hindered, delayed, or rendered impossible solely because the Wyman Amendment allows dirtier automobiles, and even though these projects can be carried out in full compliance with the Clean Air Act as now in effect.[1]

As a result, the NRC believes that the Wyman Amendment is not only inconsistent with the national commitment to protecting and promoting air quality, but will cause serious economic harm in virtually every congressional district by unnecessarily hampering desirable development. For these reasons, the NRC is strongly opposed to H.R. 13120.

Administrator Train has testified that the Wyman Amendment will cause the primary standards for one or more pollutants to be exceeded in 66 cities and regions throughout the United States. Hearings before the House Committee on Interstate and Foreign Commerce on H.R. 13834 (April 21, 1974). Thus, the effect of the Wyman Amendment will be nationwide. Most heavily impacted will be the 53 major urban areas in which transportation plans have either been promulgated, are currently proposed as necessary to attain the national ambient air standards, or will be necessary to attain the national standards in light of the effects of the Wyman Amendment, but in which the Wyman Amendment prohibits the enforcement of vehicular emission controls. These impacted urban areas include virtually every major city in the United States except for those in California and much of the Washington-Boston corridor, as well as Chicago and Phoenix-Tucson, which are exempted from the Wyman Amendment.

In order to indicate with some specificity just how pronounced the effects of the Wyman Amendment would be, the NRC retained Jay E. Norco, of Environmental Technology Assessment, Inc. ("ETA"), Oak Brook, Illinois, a recognized authority in the field of pollution control planning and assessment, to analyze the potential increase of vehicular pollutants which could result from passage of the Amendment, and the impact of any such increase upon the EPA's indirect source regulations and transportation plans. In view of the short time available to Mr. Norco and his associates due to the constraints involved in the preparation of this testimony, the complexity of the subject matter, and the incompleteness of available data, the figures set out below cannot be regarded as definitive, nor are they intended to be so. However, we believe that the following data do present a reasonably reliable picture of the magnitude of the impact which can be expected in the event the Wyman Amendment is adopted.

Table I demonstrates that hydrocarbon emissions from vehicles will be approximately one and one-third or two times higher in 1975, and one and three-quarters to three times higher in 1977, if the Wyman Amendment is adopted that if it is not, depending upon whether all or only some of the external pollution control devices are disconnected or not installed as original equipment. Similarly, Table II shows carbon monoxide emissions one and two-thirds to more than two times higher in 1975, and two to three times higher in 1977, with the Wyman Amendment than without it, under the same circumstances. Furthermore, these figures assume that the number of automobiles in service will not increase from 1972, the base year used by ETA in its calculations, to 1975 or 1977; that no crankcase or evaporative devices are disconnected or not installed as original equipment as a result of the Wyman Amendment; and that all eligible automobiles are decontrolled. Insofar as the automobile population increases, or crankcase or evapora-

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[1] Furthermore, as materials submitted by others to this Committee indicate, there is substantial doubt that the Wyman Amendment will result in significant fuel savings, or indeed, in any fuel savings at all. Thus, while the Amendment's supporters have suggested that fuel savings of up to 17 to 20 percent could result from disconnection of vehicular pollution control devices, the EPA has concluded that it is probable that no fuel savings and perhaps even a slight fuel loss will result from the Wyman Amendment. *Compare* remarks of Representative Wyman, 119 Cong. Rec. H11173 (Dec. 12, 1973) *with* Office of Mobile Source Air Pollution Control, EPA, A Study of Fuel Economy Changes Resulting from Tampering with Emission Controls (January, 1974).

tive devices are eliminated, the pollutants caused by the Wyman Amendment will increase over the foregoing figures. Insofar as not all eligible vehicles are decontrolled, such pollutants will decrease.

TABLE I.—EFFECT OF WYMAN AMENDMENT ON HYDROCARBON EMISSIONS

[In percent]

	Baseline (under present act)	Wyman amendment, case I [1]	Wyman amendment, case II [2]
1975	100	204	133
1977	100	289	173

[1] Case I assumes that the vehicle population size remains stable and that all external control devices (not including crankcase and evaporative controls) are reversible and decontrolled on all vehicles eligible for decontrol under the Wyman amendment.

[2] Case II is based upon EPA data and assumes that the vehicle population size remains stable and that some, but not all, external control devices (not including crankcase and evaporative controls) are reversible and decontrolled on all vehicles eligible for decontrol under the Wyman amendment.

TABLE II.—EFFECT OF WYMAN AMENDMENT ON CO EMISSIONS

[In percent]

	Baseline (under present act)	Wyman amendment, case I [1]	Wyman amendment, case II [2]
1975	100	215	167
1977	100	292	209

[1] Case I assumes that the vehicle population size remains stable and that all external control devices (not including crankcase and evaporative controls) are reversible and decontrolled on all vehicles eligible for decontrol under the Wyman amendment.

[2] Case II is based upon EPA data and assumes that the vehicle population size remains stable and that some, but not all, external control devices (not including crankcase and evaporative controls) are reversible and decontrolled on all vehicles eligible for decontrol under the Wyman amendment.

Tables IIIA and IIIB set forth the impact in 1975 and 1977, based upon the same assumptions as to disconnection of control devices discussed above, of the dramatic increases in vehicular emissions resulting from the Wyman Amendment upon the EPA's indirect source regulations. For example, the present proposed indirect source regulations provide that no parking facility of 1,000 spaces or more may be constructed in any Standard Metropolitan Statistical Area ("SMSA") without an EPA construction permit, and that where the facility will attract vehicle traffic so as to impact the ambient air quality standards, such a permit will be denied. To achieve the same air quality levels in the event that the Wyman Amendment is adopted, the EPA will have to lower its control of construction permits in 1975 to SMSA lots with 464 to 599 spaces and to SMSA lots with 343 to 478 spaces in 1977.

In other words, the amount of pollutants emitted from vehicles using a 1,000 vehicle lot under the Act's present standards could result from a lot half that size in 1975 and one-third that size in 1977 under the Wyman Amendment. This, of course, means, that if a 1,000 vehicle lot is the maximum that can be constructed under the present Act, should the Wyman Amendment become law the permissible development on the same property would be only half as large in 1975 and one-third as large in 1977. As Tables IIIA and IIIB demonstrate, the same parameters hold true for every highway project and development with a parking lot. Thus, the implications of the Wyman bill on land use and development in the United States are truly staggering.

TABLE IIIA.—EFFECT OF WYMAN AMENDMENT UPON INDIRECT SOURCE REGULATIONS, 1975

	Baseline (current minimum size for control)	Equivalent minimum control size Wyman amendment case I [1]	Equivalent minimum control size Wyman amendment case II [2]
Parking lot construction in SMSAS (number of spaces)	1,000	464	599
Parking lot construction outside SMSAS (number of spaces)	2,000	928	1,198
Parking lot modification in SMSAS (number of spaces)	500	232	299
Parking lot modification outside SMSAS (number of spaces)	1,000	464	599
Highway construction (vehicles per day)	20,000	9,282	11,978
Highway modification (vehicles per day)	10,000	4,641	5,989

[1] Case I assumes that the vehicle population size remains stable and that all external control devices (not including crankcase and evaporative controls) are reversible and decontrolled on all vehicles eligible for decontrol under the Wyman amendment.

[2] Case II is based upon EPA data and assumes that the vehicle population size remains stable and that some, but not all, external control devices (not including crankcase and evaporative controls) are reversible and decontrolled on all vehicles eligible for decontrol under the Wyman amendment.

TABLE IIIB.—EFFECT OF WYMAN AMENDMENT UPON INDIRECT SOURCE REGULATIONS, 1977

	Baseline (current minimum size for control)	Equivalent minimum control size Wyman amendment case I [1]	Equivalent minimum control size Wyman amendment case II [2]
Parking lot construction in SMSAS (number of spaces)	1,000	343	478
Parking lot construction outside SMSAS (number of spaces)	2,000	686	955
Parking lot modification in SMSAS (number of spaces)	500	171	239
Parking lot modification outside SMSAS (number of spaces)	1,000	343	478
Highway construction (vehicles per day)	20,000	6,855	9,551
Highway modification (vehicles per day)	10,000	3,425	4,776

[1] Case I assumes that the vehicle population size remains stable and that all external control devices (not including crankcase and evaporative controls) are reversible and decontrolled on all vehicles eligible for decontrol under the Wyman amendment.

[2] Case II is based upon EPA data and assumes that the vehicle population size remains stable and that some, but not all, external control devices (not including crankcase and evaporative controls) are reversible and decontrolled on all vehicles eligible for decontrol under the Wyman amendment.

The Wyman Amendment will have a similar or perhaps even greater impact upon transportation plans in those areas in which emission control devices will not be required. In view of the limited time available for the preparation of this testimony, ETA personnel were not able to examine each of the proposed or promulgated transportation plans. Instead, EPA analyzed the plan for Denver, Colorado, published in the Federal Register on November 7, 1973, 38 Fed. Reg. 30818, and the impact of the Wyman Amendment upon that plan. Denver was chosen for examination because its situation is neither extreme nor atypical and because the Denver data were relatively easily available. While for the reasons set forth above, this analysis is in no way intended as definitive, we believe it does set forth with reasonable accuracy the nature of the impact of the Wyman Amendment.

The results of the examination of the Denver plan are set forth in Tables IV and V. They show that, with the adoption of the Wyman Amendment, it can reasonably be expected that the 1975 eight-hour carbon monoxide reading will be between 36.1 and 38.4 parts per million and the one-hour oxident reading will be .17 to .19 parts per million.[2] In order to improve the air quality levels of carbon monoxide and oxidents to those envisaged for 1975 under the present Act, a reduction of 75% to 76% in vehicle miles traveled is necessary for carbon monoxide and a 53% to 58% reduction is necessary for oxidents.[3] These reductions are in addition to the bus and carpool lanes, parking construction limita-

[2] These calculations assume that present emissions are divided half and half between stationary and mobile sources in Denver, as is the average nationwide.

[3] These calculations assume that all necessary reductions will be borne by mobile sources.

tions, on-street parking limits, and mass transit improvements proposed under the present Denver transportation plan. Such a reduction in vehicle miles traveled could only come through a very stringent gas rationing system, with all its social and economic dislocations and hardships.

TABLE IV.—EFFECT OF WYMAN AMENDMENT ON DENVER TRANSPORTATION PLAN—CARBON MONOXIDE [1]

	Wyman amendment case I [2]	Wyman amendment case II [3]
Carbon monoxide 8 hr reading 1975 (parts per million)	38.4	36.1
Carbon monoxide additional VMT reduction over current plan-1975 (percent)	76.0	75.0
Carbon monoxide 8 hr reading 1977 (parts per million)	39.3	35.1
Carbon monoxide additional VMT reduction over current plan-1977 (percent)	77.0	74.0

[1] Denver calculations include correction for high altitude.
[2] Case I assumes that the vehicle population size remains stable and that all external control devices (not including crankcase and evaporative controls) are reversible and decontrolled on all vehicles eligible for decontrol under the Wyman amendment.
[3] Case II is based upon EPA data and assumes that the vehicle population size remains stable and that some, but not all, external control devices (not including crankcase and evaporative controls) are reversible and decontrolled on all vehicles eligible for decontrol under the Wyman amendment.

TABLE V.—EFFECT OF WYMAN AMENDMENT ON DENVER TRANSPORTATION PLAN—OXIDENT [1]

	Wyman amendment case I [2]	Wyman amendment case II
Oxident 1 hr reading 1975 (parts per million)	0.19	0.17
Oxident additional VMT reduction over current plan—1975 (percent)	58	53
Oxident 1 hr reading 1977 (parts per million)	0.15	0.12
Oxident additional VMT reduction over current plan—1977 (percent)	47	33

[1] Denver calculations include correction for high altitude.
[2] Case I assumes that the vehicle population size remains stable and that all external control devices (not including crankcase and evaporative controls) are reversible and decontrolled on all vehicles eligible for decontrol under the Wyman amendment.
[3] Case II is based upon EPA data and assumes that the vehicle population size remains stable and that some, but not all, external control devices (not including crankcase and evaporative controls) are reversible and decontrolled on all vehicles eligible for decontrol under the Wyman amendment.

Furthermore, the situation is even more serious for 1977 because the similar percentage reductions must occur in addition to the requirements proposed under the present Act—which already include some gas rationing.

The foregoing discussion strongly suggests that the adoption of the Wyman Amendment must either lead to the wholesale abandonment of the goals of the Clean Air Act of 1970 or to sever limitations on growth imposed by indirect source regulations and transportation plans. The former alternative will mean the abandonment of the pursuit of air quality and the protection of our environment and the latter will cause tremendous economic hardship in almost every congressional district as development projects are delayed or cancelled and thousands of jobs lost. The NRC considers both of these alternatives to be unsatisfactory. Fortunately, both of these alternatives can be avoided by the rejection of the Wyman Amendment. The NRC believes that this Committee, and the Congress, should preserve the commitment to protecting both the nation's air quality and its economy. Accordingly, we respectfully urge that the Wyman Amendment be rejected.

Yours truly,

ALBERT A. WALSH, *President.*

Mr. DINGELL. What this says is that the Wyman amendment is going to cause impact in other areas which may not presently be available to view. This is the kind of matter which requires careful consideration, because while we might be able to allow people through backyard mechanics or otherwise to take off air abatement devices,

it follows that the Wyman amendment is going to affect automobiles which are going to be moving throughout the whole of the country.

It furthermore follows, and very regretfully I say, that not only will this have an effect, but it will result in further restrictions, limitations, and reductions in other economic activities which will be required to make the now-fixed statutory standards required by the Clean Air Act.

Mr. KETCHUM. I have asked the gentleman to yield for a question. A few moments ago in the discussion preceding this the gentleman mentioned that someone from EPA testified in opposition to the Wyman amendment.

Mr. DINGELL. That gentleman was Mr. Train.

Mr. KETCHUM. That is Mr. Russell Train?

Mr. DINGELL. That is correct.

Mr. KETCHUM. I would remind the body that this is the same gentleman that established a set of regulations for the city of Los Angeles that were so ridiculous, they wanted to shut the city down.

Mr. DINGELL. That was not Mr. Train. That was Mr. Train's predecessor.

Mr. KETCHUM. If we want to see additional burdens imposed on the city of Los Angeles and other major cities amplified and made more difficult, then vote for the Wyman amendment. That is the way to get it.

Mr. TAYLOR of Missouri. Mr. Chairman, I rise in support of the Wyman amendment. I believe if this House is responsive to the people of the Nation and certainly to the car-buying public of this Nation, it behooves us to accept this amendment, because I believe the people of this Nation are sick and tired of having their lives controlled in all these ways.

The CHAIRMAN. The time of the gentleman has expired.

Mr. NELSEN. Mr. Chairman, I move to strike the requisite number of words.

I rise in opposition to the Wyman amendment.

I yield to my friend, the gentleman from Missouri (Mr. Taylor) for his unfinished statement.

Mr. TAYLOR of Missouri. I thank the gentleman. As I was saying, I believe the car-buying public of this Nation, which is so important to the economy of this Nation, has shown their resentment to these octane octopuses being forced upon them and the gas guzzlers they must buy, by their resistance in the showrooms in this country. Certainly it has been made crystal clear in the plants that have been closed down, in the employees that have been laid off in our assembly plants, because of buyer resistance to automobiles as they are being equipped in the Nation today with so-called emission controls.

I think the people of this country, and certainly the ones that I come in contact with in my district, do resent this. I am an automobile dealer and I can say first-hand there is a great resistance in the people who come into the showrooms to buy automobiles that ordinarily would buy and trade automobiles. They are not trading, because they have a 1970 or 1971 model that gives them good gas mileage.

In the interest of saving millions of dollars to the motoring public, precious gasoline, and thousands of jobs in the automobile industry, I urge the adoption of this amendment.

Mr. NELSEN. Mr. Chairman and members of the committee, I served on the conference committee on the original bill, and at that time I argued with one of our Members on the other side that the standards that we were demanding could not be reached in the time frame allotted in the legislation. So, this Congress really crowded the industry at a time when we should have given more time for engineering and research to do a better job.

In order to try to meet the standards that we set up, some of the gadgetry that we talk about was put on automobiles. Now, it has been suggested that a change can be made by a mechanic. It cannot be made, because some of the construction of the engine is such that even if the catalytic converter was taken off, we would still have our mileage problem with us in the same automobile. We find this, that by research, the catalytic converter has been improved. As has been mentioned, a 26-percent increase in mileage can be expected.

Mr. Chairman, many of us criticize some of the environmentalists for demanding things that are unattainable, but I want to say that certainly we must compliment those who are concerned about our environment. We want to applaud what they have tried to do and the goals they have set.

However, I think sometimes their demands have been too great. I believe we can work these things out. Certainly, we do not want to go backward. If we do have an automobile now that has the mileage potential, and if we do admit we are improving the environment, in my judgment we should not back down, as has been pointed out.

The administration of such a piece of legislation, containing the Wyman language, in my judgment, would be difficult where we have one area up a road with it on and another area with it off. How in the world are we going to enforce a situation like that where we have 66 cities involved? Miami, Fla., has been mentioned. Miami is concerned; Minneapolis would be concerned. How in the world are we going to enforce it?

Mr. Chairman, I want to say this, that I hope that this amendment is voted down, and I hope that when we do get to the Clean Air Act, we may look at all possibilities.

When we get to that bill, I hope the environmentalists of our country will recognize that there is a little give and take in this total picture; that we want to seek goals to improve the environment. At the same time, the economic problems of the country should be considered in conjunction with it. There are things we can do and should do when we extend the Clean Air Act.

Mr. JARMAN. Mr. Chairman, I rise in support of the Wyman amendment. I believe it proposes a commonsense approach to combating our energy shortages while still retaining our commitment to our environmental protection. I am totally aware of the importance of the Clean Air Act and not for a moment am I deferring from this program when I urge my colleagues to support this amendment.

Thirteen areas have been designated as having significant auto emission related air pollution. In the remaining portion of the country, approximately 90 percent of the geographical United States, there is no significant air pollution related to automobile emissions. The point and thrust of this amendment is that there is no sense in burdening the

entire United States with the same emission control standards as are required for the heavily populated metropolitan areas of this country.

To discontinue temporarily the requirement for such auto emission control devices in the less populous areas of our country will save millions of gallons of gasoline annually. Figures indicate that the new emission control devices on cars decrease gasoline mileage by 7 percent or more. These devices are estimated to have increased annual gasoline consumption by more than 300,000 barrels a day.

We have here today the opportunity to correct part of the fuel shortage problem by adopting this amendment. We retain the Clean Air Act standards where they are most needed. This amendment accommodates them because it provides that in the areas most severely affected we will continue to use auto emission controls. I see no reason why we should continue to penalize every driver in the country because of the 13 areas with air quality problems. There is no sense in imposing an enormous energy loss to the Nation by requiring auto emission controls for the entire Nation. This loss of energy is unacceptable in this time of energy crisis.

Mr. Chairman, it is imperative that we strike a balance between our energy concerns and our environmental concerns. I believe this amendment offers that balance and I urge its adoption.

Mr. ICHORD. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of the Wyman amendment, and I associate myself with the remarks of the gentleman from Oklahoma Mr. Jarman, and the gentleman from New Hampshire Mr. Wyman.

Mr. Chairman, I truly believe that this amendment should be termed the "Commonsense Amendment of 1974," and I think the vote on this amendment will determine whether the House is going to follow the advice of at least the caricature of the emotional environmentalists mentioned by the gentleman from Louisiana, Mr. Waggonner, who fail to realize that you are in quite a dilemma when you approach the problems of pollution: If you do not wash your body, you pollute the air; but if you do wash your body, you pollute the water.

Mr. Chairman, we are not going to solve the environmental problems overnight. They have been building up for many, many decades. There are tradeoffs to be made.

Mr. Chairman, it is absolutely devoid of commonsense—and I say this to the gentleman from Michigan—to require an emission device on an automobile in Podunk, Mich., where there are no problems of air pollution. Certainly we have problems of air pollution in Washington, D.C., in New York, in Los Angeles, and in several other areas around the country. But there is no real problem in Podunk, Mich.

Mr. Chairman, in a period of gas shortage, at a time when we could possibly be in another gas crisis, to require such an emission device defies commonsense and reason.

Mr. DINGELL. Mr. Chairman, I think the gentleman ought to recognize, first of all, that automobiles do not stand still. Automobiles in Podunk and other automobiles are driven throughout the United States.

Mr. Chairman, this is reflected by the red areas on the map shown by the gentleman from New Hampshire (Mr. WYMAN) the author

of the amendment. But more importantly, two-thirds of the people and two-thirds of the automobiles are in those red areas.

Mr. Ichord. Mr. Chairman, that is quite true, but 90 percent of the time those automobiles will never go into those red areas.

Mr. Dingell. Mr. Chairman, I will say that the gentleman is in grave error.

Mr. Ichord. Mr. Chairman, I will say to the gentleman from Michigan that this requirement is about as silly as the Department of Transportation regulation requiring seatbelts to be hooked up to the ignitions on all 1974 automobiles. I hope the gentleman will agree with me on that point anyway.

Mr. Dingell. Mr. Chairman, if the gentleman will yield further, I do agree that the seatbelt hookup is absolutely insane. In my judgment, I think that perhaps some of the judgments made under the clean air amendment are unwise.

I would point out to the gentleman that many of the Members in this body voted for the requirements of imposing a statutory technology upon the industry before the industry was prepared to meet it.

Now, the gentleman proposes to impose on the automobile industry the duty to produce essentially two different cars. This amendment imposes upon the communities the responsibility of picking and choosing which automobiles would be permitted in the area, where they do not meet the requirements of the law imposed on the residents.

Mr. Ichord. Mr. Chairman, let me ask the gentleman if I understand him correctly.

Is the gentleman saying that because the automobile industry has perhaps tooled up to put this expensive device on automobiles, we should permit them to recover their investment?

Mr. Dingell. Mr. Chairman, the automobile industry is going to make money. Whatever happens, they are going to charge things like this to the price of the automobile, and they are going to make a profit. I am not here to speak for or against the industry. The industry is going to do what the Government requires, and they are going to make a profit.

Mr. Wyman. Mr. Chairman, the gentleman from Michigan has repeatedly given us inaccurate statements. I want to set the record straight.

Seventy percent of the cars in America would be decontrolled under this amendment. Only 30 percent of the cars in America would remain controlled for residents of the red or contiguous areas.

The in-and-out traffic into the red areas from the cars of the white areas would not have any appreciable effect on the ambient air quality in these regions, because there just is not enough of it.

Three previous speakers have suggested that there was a 26-percent improvement in gas mileage. I think the record ought to show that what they are saying really is it is only 74 percent as bad as it was.

Mr. Collins of Texas. I want to say about this particular amendment, which has some merit in it, that I must stress the fact that it would lower the price of gasoline. The reason why the price is so high is because of the shortage. Fifty percent of the crude oil goes for automobiles. I know when you are running an automobile and only getting 9 miles to the gallon, when you used to get 15 miles to the gallon, you

are automatically creating a shortage. Within 2 years we will have the greatest production and we will have a lower price on gasoline.

Mr. Ichord. I agree with the gentleman, and I hope the House will adopt the Wyman commonsense amendment.

Mr. Randall. Mr. Chairman, I move to strike the last word.

Mr. Chairman, yesterday I called into my office some representatives of the EPA from over in Foggy Bottom, not knowing this bill would be on the floor today. We asked them why they were distributing posters and circulars to certain mechanics who are not subject to restrictions as to removal of emission controls. They answered that the distribution was through trade association. They admitted they were preparing and distributing posters and circulars warning mechanics not to modify these emission control devices. I protested that these circulars left the impression and the innuendo that any mechanic who touched a device was proceeding contrary to law. My understanding is that the law only prohibits a dealer from making a modification, but does not apply to an independent mechanic—not working for a new car dealer. If that is true these posters and circulars are false and misleading.

I see the gentleman from Oklahoma, a member of the committee, nodding his head. Let me commend the gentleman, Mr. Jarman, because he proved by his remarks in favor of the Wyman amendment that the committee is not unanimously against the amendment of the gentleman from New Hampshire.

Mr. Chairman, back in early December when we were debating this same amendment I happened to describe a demonstration that I observed. I would like to repeat that description now. It may not change any minds, but it may be an interesting description.

Someone mentioned today that the modification of emission devices would save only 2 or 3 miles to a gallon of gasoline. But if you read the material distributed by the gentleman from New Hampshire (Mr. Wyman) which was alluded to by the gentleman from Texas (Mr. Collins) you will see that the saving of gas is not the only consideration. There would also be a big saving of money. Millions could be saved if this amendment could be adopted.

Now let me describe a modification of emission control devices which I witnessed just a few months ago in one of our county seat towns in our district in west-central Missouri. The site was a vocational school with 35 or 40 young men attending a class in automobile mechanics. The teacher who was giving this demonstration said, "Let me tell you something about emission control devices." He had a 1973 or 1974 Pontiac, with its hood lifted and the engine hooked up to an expensive Sun tester. I do not know exactly what he did except I observed he took an ordinary screwdriver—and he did not have a lot of tools with him—he simply adjusted a certain part on the left side of the engine which I later found out was the recirculating valve. He said, "There are two things you need to know about the performance of an engine. One is the revolutions per minute and the other is the compression." He pointed to a gage on the Sun tester to say "Here is what the emission control devices are doing to the engine—it is causing the engine to drag." Then he adjusted the valve to let in some air. The rpms, which were before at 1,100, jumped up to 1,400 rpms. Then he said, "Watch

carefully," and he went over to the right side of the engine. He said, "Look at that column of mercury. That tells you the compression. Slowed timing can put a load on an engine like a car pulling a big weight. He said, "It is like the car was pulling two or three heavily loaded trailers." Then he took his screwdriver and adjusted the timing. The engine immediately picked up without touching the throttle to almost twice its compression—or from 7 to about 14 inches of mercury on the gage.

This description is not a figment of my imagination. I actually saw it.

Then the teacher asked "Do you notice any increase in the carbon dioxide in this garage?" as he left the car running. My point in giving this description of an expert making an emission control modification, is to emphasize that anyone who could witness such a demonstration would immediately recognize the merits of this amendment offered by the gentleman from New Hampshire.

Mr. Chairman, in the Kansas City, Mo., area there are billboards which advertise the fact that the heart of America has clean air. The wording on the billboards recites that the metropolitan area of Kansas City has the cleanest air of any city in America. That is why mail from my constituents inquires "Why should we be penalized with pollution devices on our cars that reduce the gasoline mileage when we have no pollution problem?" That is a good question. It is one that is difficult or impossible to answer.

One point in this entire argument that is so quickly glossed over is the fact that if an emission device reduces gasoline consumption then that means that for the same car to accomplish all the chores that an owner requires of his car will be using more gasoline and pumping more pollutants into the air. If the pollution control device were removed less gasoline would be used and fewer pollutants would be added to the air.

Unfortunately too many think there should be no balance ever struck at all between strict and unbending environmental controls and some of the necessities of everyday life and living including the factor of unemployment caused from too strict enforcement of environmental regulations.

If there is one fair way to describe the Wyman amendment, it is to call it the "commonsense amendment." It will save billions of gallons of gasoline, and in these times of almost galloping inflation it will save hundreds of millions of dollars of money for consumers.

A quick glance at the map will show that there are really only four areas of significant auto-related air pollution in the United States. Quite frankly, the standards of the 1970 clean air laws as it relates to light duty automotive vehicles have proven to be too strict.

Why require the entire Nation to bear an energy-wasting burden that is a problem in only a small part of the country? A moment ago I mentioned the term "commonsense" to emphasize the proper description of the amendment. What sense is there in the requirement that all the residents of the entire State of North Dakota have to purchase emission control-equipped cars when that entire State has no emission control-related air pollution? The situation in North Dakota multiplied in State after State after State adds up to a huge energy cost all because of a requirement which becomes not only energy wasteful

but ridiculous. This Congress will deserve public condemnation if we do not allow for the partial suspension of auto emission controls.

Mr. Chairman, the Wyman amendment should be adopted.

Mr. SYMMS. Mr. Chairman, I move to strike the requisite number of words, and I rise in favor of the amendment offered by the gentleman from New Hampshire (Mr. Wyman).

Mr. Chairman, I am pleased to associate myself with the remarks made by the gentleman from New Hampshire, Mr. Wyman, and the gentleman from Missouri, Mr. Ichord, and to speak in favor of this commonsense amendment which will help to lower the gasoline prices and make it more convenient for the American consumers in this country who live in the nonpolluted areas shown on the map.

Mr. WYMAN. Mr. Chairman, I thank the gentleman for yielding me this time in order to give me a little time to respond to some of the misstatements that have been made, that are so inaccurate, and I refer first to the statement about the alleged 26-percent improvement in gas mileage. I would like to read one section from ETA's 1974 report on the penalties on this country from emissions controls, and I am quoting from page 1:

> The sales weighted average fuel economy loss due to emission controls (including reduction in compression ratio) for 1973 vehicles, compared to uncontrolled (pre-1968) vehicles, is 10.1 percent. However, vehicles less than 3,500 pounds show an average 3 percent gain (attributable to carburetor changes made to control emissions) while vehicles heavier than 3,500 pounds show losses up to 18 percent. The size of these losses, however, is highly dependent on the type of control systems the manufacturer has chosen to use.

One of the things that has been suggested here is that in some way automobile dealers or the automobile industry would be penalized by my amendment. I would like to call the attention of Members to the fact that one of the Members of this body who has spoken in support of this amendment is an automobile dealer, the gentleman from Missouri.

I want to call the attention of Members also to the fact that one of the things that is troubling the automobile dealers as they try to sell cars in America is that when potential customers look at that sticker on the window, the sticker that shows the low gasoline mileage because of these devices in this time of a gasoline shortage, it is enough to drive most anybody from wanting to buy an automobile.

This amendment would not apply to the areas about which the Members have protested so loudly, such as Chicago and Washington. The amendment does not affect the cars of residents of Washington, Chicago, or Los Angeles. They will still have to have emission controls on their cars.

But why should this requirement be imposed on the whole country, and thus impose an operating cost penalty, and a capital cost penalty on this whole Nation running into billions of dollars? It is a fact—and no one on this floor can refute it—that the in-and-out traffic into the red areas from cars that do not have emissions controls is not going to destroy their clean air. Yet opponents of my amendment would make everybody in the Nation face a capital cost of billions of dollars, and a waste of gasoline in the billions of gallons.

It seems to me that in the interest of fairness it should be noted that the statement that the energy situation has eased is really not

correct, because a gasoline shortage still persists. If we are to earn the commendation of the people of this country we ought not to demand emissions controls on the cars in this country of residents in those areas where there is no honest-to-goodness emissions-related public health problem.

Mr. Goodling. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to make a brief statement, and then pose a question to the gentleman from Florida, Mr. Rogers, if the gentleman will listen to my brief statement.

Mr. Chairman, I have been driving the same model automobile for 20 to 25 years. The last few models I have had I have gotten from 14 to 16 miles per gallon of gasoline, depending on the speed at which I drive, of course.

I am presently driving a 1973 model, and I am now getting 10 miles per gallon of gasoline. This 1973 model has all of the gadgets that we are talking about.

My question to the gentleman from Florida is this: Am I causing less pollution because I am burning one-third more gasoline?

Does the gentleman have an answer to that question?

Mr. Rogers. Is the gentleman from Pennsylvania causing less pollution because he is out driving with less gas, or with more?

Mr. Goodling. No; because I am driving with a third more gasoline. Am I causing less pollution because I have these gadgets on my car and using a third more gasoline?

Mr. Rogers. Yes; the gentleman is creating less because the cars are geared with the pollution devices to produce less pollution per mile. The auto emission standards are based on the health standards and calculated on the basis of grams per mile. This has been checked scientifically. Even the American Medical Association has just reendorsed the standards for health.

I am amazed that people are saying there are no health effects.

Mr. Goodling. What would the American Medical Association know about the mechanics of automobiles?

Mr. Rogers. The gentleman asks, How are they concerned with it? I will tell the gentleman what they are concerned with—carbon monoxide, which is a toxic gas.

Mr. Goodling. The gentleman is not answering my question. I am asking him if I am causing less pollution because I am burning a third more gasoline.

Mr. Rogers. The gentleman is causing less pollution per mile because the devices have reduced it; so for the number of miles he is driving, he is creating less in that same number of miles he has driven.

Mr. Goodling. One further question. The gentleman speaks about the 1975 models. Has the gasoline consumption decreased that much between the 1973 and the 1975 models?

Mr. Rogers. On the new models that they are going into now, which will be in construction very shortly and be marketed in 1975, the initial tests are showing a gain of up to 26 percent. This has already been published in some of the newspapers.

With this advantage of improved mileage—and the companies have already testified before our committees—General Motors said their

1975 models will improve up to 13 percent; Ford said up to 6 or 9. Now the actual tests are showing they are going up as high as 26 percent in the large automobiles.

Mr. GOODLING. My friend, the gentleman from Alaska, would be delighted to hear the gentleman from Florida say that about the Ford, because he just sat there and told me a moment ago he is getting 8-miles-per-gallon on his 1973 model.

Mr. ROGERS. That is in the models coming out in 1975. They are doing the testing; this is what they saw with the new catalytic converter. To adopt the Wyman amendment would actually increase the fuel, if this economy and increased mileage comes about, which it now appears it will.

Mr. COLLIER. So that we understand this 26 percent improvement reference that is being thrown around here, the point is that if one was getting 14 miles a gallon and he is now getting 10, the 26 percent increase means he is still not getting 14 miles; he is getting 11. So, as I said before, what appears to be a 26 percent improvement in mileage is still 74 percent worse than what it was before the emission gadgets were required equipment.

Mr. ROGERS. But the gentleman has not broken down what causes the loss of mileage. If he will break it down as to weight, the 2,500-pound car uses exactly one-half the gas of a 5,000-pound car. The penalty from air-conditioning is 9 to 15 percent, and the penalty from power steering and power windows is anywhere from 9 to 20 percent. The air pollution penalty has been anywhere from 3 to about 15 to 18 percent. The increase of 26 percent has overcome the air pollution penalty.

Mr. ECKHARDT. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I support this bill. This bill is a part of a total package of two bills addressed to the energy problem. It contains not only provisions with respect to certain tolerances, certain reductions of standards with respect to auto emissions and with respect to emissions from plants, but also certain reporting requirements, extremely important concerning petroleum resources provisions. It is part of a total package, as I have said which includes another bill not yet before this body addressed to the total question of fuel allocation and prices.

I urge that this be not made a Christmas tree for relaxation of environmental standards. I want to support this bill. I commend the gentleman from Florida and the able staff of the Committee on Interstate and Foreign Commerce for examining the questions in deep technical detail. We should not simply utilize this instrument to reduce environmental standards. The committee has done a workmanlike job and has produced a balanced program deserving of support.

Mr. ADAMS. Mr. Chairman, I associate myself with the remarks made by the gentleman from Texas. This bill is very much a moderate bill. It is the part of the total energy package that was deemed most noncontroversial and which might be presented in a short period of time today. The other bill is still to be pending before this House and it contains the provisions that many of us want to see in the energy bill. We agreed that this bill should go forward at this time.

I can state if we go into a Christmas tree operation like this, that many of us will be constrained to go back into the amending process

we were in before. This amendment has been before the House. It has been voted down before.

I specifically asked the question, in answer to the gentleman who was previously in the well, as to why his car does not get as much mileage now, and it was agreed by all the witnesses who testified that the pollution devices are far down the list as a cause of loss of mileage. They are far behind air conditioning and power steering and the increase in weight and the power windows and all the other accouterments, including the fact that they have not designed smaller engines and smaller cars.

I associate myself with the remarks made by the gentleman from Texas. I oppose this amendment. I hope it will be voted down. I hope this House will vote for this bill promptly without any further amendments.

Mr. ECKHARDT. I hope the committee will go along with the committee bill.

Mr. SEIBERLING. Mr. Chairman, it seems to me the amendment offered by the gentleman from New Hampshire (Mr. Wyman) is based on the belief that removal of the pollution control devices will save gas and increase mileage.

Last winter a group of auto dealers came to see me, headed by one of the biggest dealers in my district, and he made the same sort of pitch for taking off the pollution device. Two days later his chief mechanic was quoted in the local newspaper as saying: "Do not take the controls off the cars; if you do you will worsen the gas mileage, because today's car engines are designed to operate with these emission controls." It seems to me the amendment is based on a false premise.

Mr. ROGERS. Mr. Chairman, I would think if the author of this amendment really wanted to save energy he would suggest we take off air-conditioning from automobiles which affects mileage more than air pollution control devices, and he would suggest taking off the power systems for windows, or he would suggest reducing the weight of the cars.

Why should we do something that will reduce pollution controls that would be of benefit to the health of the American people? The House has turned this down twice and I think it made a good judgment then and I hope it will do so again.

Mr. MCEWEN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, after I initially supported the efforts of the gentleman from New Hampshire there was one question raised that troubled me, and that was the question of whether or not the emission controls could be removed or modified, because I was told by some that this could not be done. Therefore the amendment that the gentleman from New Hampshire offered then and is offering now might be meaningless.

I took this up with one of the largest of the automobile dealers in my district. For obvious reasons, I will not give his name or give the location of his business. Let me tell the Members what this gentleman wrote to me:

> It has been my opinion, and it is the opinion of some qualified people who work for me—

And he told me specifically he went right into his shop and talked to the mechanics—

that some of the controls can be taken off successfully; and if done properly, the resultant increase in gasoline consumption performance per se is improved some 15 to 25 percent. It is also true, however—

And I would point this out to my friend from Ohio who spoke about the mechanic in his community—

that if the equipment is removed by someone who doesn't know what they are doing, that it can actually result in a decrease in fuel consumption performance. In my opinion, it takes a pretty knowledgeable person to do it and do it correctly because there is no information available from the manufacturer with regard to this.

I called Service personnel in Detroit for Cadillac and in Lansing for Oldsmobile to get suggestions from them as to the proper procedure inasmuch as there is nothing in our maintenance books with regards to this. The answer that I received in each instance was that they did not even want to discuss it, and they also felt that I should not discuss it with anyone. There is a pretty strict law with regard to this, and I know that we as a dealer or service organization, make any attempt to do this that the fines are rather severe, up to $10,000. It is obvious to me that the factory is brain-washed by the Environmental people in the Government responsible for the present law. And as a consequence, I could get no information for you from that source that would give us anything concrete to go on.

Mr. Chairman, I am satisfied that these emission control devices can be modified.

Now, each of us here today will make his own decision; but for me, Mr. Chairman, I am not going back to northern New York and tell farmers that own farm vehicles that never go as far as the State Fair at Syracuse, that go to the grist mill and go to the farm supply store, that they have to have these damnable octane octopuses that are guzzling up gasoline.

The chairman spoke as if the fuel crisis is over. We are happy, I say to my friend from Florida, that the long lines are no longer there; but there is also concern that we are in a false feeling of security, that possibly the energy crisis is not all behind us.

As long as that be true, I hope, that recognizing that, people can make corrections in these devices if they see fit in areas where pollution is not a problem. I hope the amendment of the gentleman from New Hampshire prevails.

Mr. ROGERS. I understand how the gentleman feels. I hope he will cure the health problems of the American people with the pollution we have. This if taken on will increase it dramatically. We are also finding out that the emissions from automobiles are affecting the chromosomes and some will be somewhat amazed when the scientific evidence comes out substantially that change that we had not previously known.

I am sure we know what has happened with lead in the State of Maine, where lead has been carried by the air into the waters of Maine. If we take off the pollution devices in those cars, it simply builds it up in these States and all the other States.

I think it would be tragic if we could not properly balance the health needs of this Nation for clean air vis-a-vis a very emotional argument about taking off a few devices which are not going to increase gasoline mileage, because they are already improved with the new models that are coming out.

Mr. MCEWEN. Mr. Chairman, may I refer to the very authoritative publication of the New York State Department of Environmental Conservation, that air pollution from automobiles is only a problem where

there is a concentration of automobiles. I do not have that concentration in my district.

Mr. ROGERS. Except that the air does not stay just in New York City.

Mr. WYMAN. I just want to say that this argument has been made again and again. To say there is any health problem presented to this country by my amendment is pure unadulterated poppycock.

AMENDMENT OFFERED BY MR. REES TO THE AMENDMENT OFFERED BY MR. WYMAN

Mr. REES. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Rees to the amendment offered by Mr. Wyman: Section 203 of Clean Air Act (42 U.S.C. 1857f–2.) is amended by

Section d(1): Strike section G(d)(1)(2)(c)(d) of the amendment and add after G(d):

(1) A state may adopt auto emission standards higher than the standards which are in force during the period of partial emission standards (as defined in Section 203(d)(3)(A)).

(2) A state, or local subdivision, not withstanding any other provisions of law, may adopt Rules and regulations in conformance with regulations adopted by those states or subdivisions to prohibit the use of motor vehicles within their jurisdictions which do not qualify under those jurisdictions criteria on motor vehicle standards.

Mr. REES. Mr. Chairman, this is basically a States rights amendment, and would affect those areas where we have a great deal of air pollution, where we want to see the catalytic converters, where we have to have tough air pollution control laws.

I represent a district in California right in the middle of that red area, the Los Angeles Basin, and we have a very difficult problem there of pollution. The various studies that have been made by the University of California School of Medicine show that because of air pollution, our lives are shorter in the Los Angeles Basin than they are in other parts of the country. So, we are very concerned.

Mr. Chairman, this amendment does two things. It would reaffirm that an area that is within the area defined by the gentleman from New Hampshire to qualify under the partial emission standards criteria of the amendment offered by the gentleman from New Hampshire, could, if it wished, increase the criteria in regards to air pollution control standards. So, if we have a State that is one of those States that is not within that red area, and that State felt that it should have higher air pollution control standards than are designated here in terms of partial emission standard criteria, then that State legislature or the authorized air pollution control body could do that.

Second, and this is even more important, and especially important in my area of southern California, which is a tourist area with a great many people coming to southern California from other parts of the country, it would give us the power to prohibit automobiles from other States that are under the partial emission standard criteria from coming into our area. That is all it would do. It would say that we would keep them from coming in because their cars do not have the equipment that the cars in the southern California area have, and they should not come in there because they will be causing more pollutants than do the automobiles that are registered in the State of California.

Mr. Chairman, it is a very simple amendment, and I would hope that the gentleman from New Hampshire would accept this amendment to his amendment.

Mr. WYMAN. Mr. Chairman, is the gentleman aware of the fact that California was specifically excepted under the Clean Air Act of 1970, and that under existing law California is allowed to make many different standards than the rest of the country because of the Los Angeles problem?

Mr. REES. It is not a Los Angeles problem. Basically, it is a California problem. It would mean that we would have the power to keep other motor vehicles out of the State that did not qualify with the criteria on emission.

Mr. WYMAN. Would the gentleman's amendment applied nationwide mean that a State, if it wanted to, could build a fence around itself?

Mr. REES. If a State wanted to have higher air pollution standards, it could have higher air pollution standards than the standards in the amendment offered by the gentleman from New Hampshire, which are here termed as partial emission standards. The State would be able to come up to the standards of the Environmental Protection Agency. That is the intent of this amendment.

Mr. WYMAN. Under the gentleman's amendment, could a State keep trucks, for example, engaged in interstate commerce, out of the State if they did not have emission controls at the level the excluding State prescribed?

Mr. REES. If the truck did not have emission control standards that are deemed necessary for the State of California for the protection of the health of the people of the State of California, it would not be able to come into the State of California. That would apply also, of course, in the State of New Hampshire.

Mr. WYMAN. The gentleman does not agree with the fact that the in and out traffic is not large enough to adversely affect the air quality of his region?

Mr. REES. Mr. Chairman, I would say that in my area there is a great deal of transit traffic, and it has a very great effect on the air pollution control standards of the State of California.

Mr. WYMAN. Does the gentleman have figures on that?

Mr. REES. Yes; I do. I would say from the figures that I have seen, because I wrote most of the air pollution control law in the State of California when I was in the State Senate, that we have about a 20-to-25-percent inmigration and outmigration of trucks and tourists and people from other parts of the country, and this would definitely affect them.

Mr. WYMAN. But you do not have authority to exclude traffic from other States as it comes into California, do you?

Mr. REES. Mr. Chairman, I have here that wonderful phrase "notwithstanding any other provision of law," and I would hope that that would take care of the situation.

Mr. COLLIER. Mr. Chairman, the gentleman is not serious in thinking that this could withstand any kind of test under the commerce laws, is he?

Mr. REES. We will try that out.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. Rees) to the amendment offered by the gentleman from New Hampshire (Mr. Wyman).

The question was taken; and on a division (demanded by Mr. Rees) there were—ayes 30; noes 58.

So the amendment to the amendment was rejected.

Mr. STAGGERS. Mr. Chairman, I move to strike the requisite number of words.

I think we need to think carefully about this matter. We have gone a long way in protecting the health of America and we do not want to go backward.

Mr. Chairman, that is what we would do if we vote for the Wyman amendment. We would be going back in protecting the health of America.

Mr. Wyman's amendment—if accepted—will greatly endanger this bill in the Senate. It would make early enactment impossible.

We must bring another bill to this floor next month to extend the Clean Air Act. We invite Mr. Wyman to press his amendment at that time.

We have been through all of this debate before.

The administration supports the Clean Air Act provisions of this bill—as written.

The committee was nearly unanimous in support of these provisions—as written.

The automobile manufacturers support the bill—as written.

I urge you to vote down this amendment.

Do not lose sight of the fact that the auto industry desperately wants this bill—it needs its enactment in the next few days.

Mr. Chairman, I am asking this House to act with wisdom and act as men of judgment with respect to those who are to come after us, for the health of the Nation and for future generations.

I would like to ask you to pass this bill as it is now and dismiss this amendment which is before this body because it will be considered and voted on at a later time. I ask that the amendment be voted down.

Mr. HEINZ. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we have had a number of very eloquent arguments here today about what the Wyman amendment does and does not do. We have heard a lot of conflicting facts, opinions, and arguments. I will try to give the committee something that maybe we can agree upon; namely, some numbers. Some numbers that I think could be useful to each of us to bear in mind when we make our individual decisions on this amendment.

We know that we use 18 million barrels of petroleum a day in the United States. That is a pretty well-established fact. We also know that about half of that, or 9 million barrels per day is used for transportation purposes. Furthermore, of the 9 million barrels, only about 55 percent is used for automobiles, or about 5 million barrels per day. The rest goes to trucks, which use enormous quantities of fuel, and to airplanes, ships, railroads, and the like.

That brings us down to how much fuel are we talking about when we talk about removing the emission controls. The cars which are the worst offenders in terms of an increase in fuel consumption are the 1973 and 1974 models. We know that some of that increase is due to

heavier weight occasioned by the use of safety devices and to the use of air conditioning. Let us make the inordinately generous assumption that the inefficiency caused by the emission control devices is 20 percent in those models. Then, we must remember that those models constitute only about 20 percent of all the cars on the road, which means that they use about 1 million barrels of oil, as gasoline, per day. Using the 20 percent inefficiency assumption, which I think is a tremendously high figure to attribute just to the emission control devices, 20 percent of 1 million barrels per day amounts to 200,000 barrels per day. Mr. Chairman, that number, 200,000 barrels a day is barely 1 percent of the 18 million barrels of petroleum we use in this country every day. My point is that for an absolute maximum of 1 percent saving in petroleum we are talking about taking a significant risk to the public health, and this assumes that every single one of the some 18–20 million 1973 and 1974 models are converted completely.

No mention has been made of the cost of taking those pollution control devices off the 1973 and 1974 models. I have heard that it could run to several hundred dollars.

Let us not forget the confusion that would exist both in terms of manufacture and enforcement. I must reluctantly say that on a benefit-cost basis analysis the Wyman amendment just does not stand up to a careful analysis.

Mr. WYMAN. The gentleman cannot mean only the 1973 and 1974 models contribute to this, because the 1970 and 1971 and 1972 models also have significant emissions penalties. And the gentleman knows it is optional to modify such existing cars under this amendment. All it says is that you can do it when and if you want to. But when you get the new cars you will get 70 percent of them without any controls and this will save at least 1 gallon in every 10 for these cars on a weighted average.

Mr. HEINZ. The gentleman knows that it is the 1973 and 1974 models that are called the gas guzzlers, and that the 1971 and 1972 models were not nearly so greedy in their use of fuel.

Finally, as we also know, the 1975 models which will be available to us this September are much more efficient and economical, as has been pointed out by many of the Members today.

Mr. STAGGERS. Mr. Chairman, I have asked the gentleman from Pennsylvania to yield to me in order to see if we can get a time limit on the debate on this amendment.

Mr. Chairman, I ask unanimous consent that we have a vote on this amendment immediately.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

Mr. HUBER. Mr. Chairman, I object. I have been waiting for an opportunity to speak on this amendment.

Mr. STAGGERS. Mr. Chairman, I move that all debate on this amendment and all amendments thereto close in 5 minutes.

The motion was agreed to.

Mr. HUBER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman and Members of the Committee, about 6 weeks ago we had the president of the Chrysler Corp. meet with the Michigan delegation to discuss this problem. I am rather amazed that my fellow

Members of the Michigan delegation have not been communicating to the other Members that which was brought to their attention at some great length by the president of the Chrysler Motor Corp.

The things that he said I believe bear repeating, and surely that gentleman knows as much as anybody on this floor does about manufacturing automobiles.

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. HUBER. I will yield to the gentleman from Ohio if I have time, but first let me complete my statement.

Mr. Chairman, there are two things that bother me in what that gentleman said.

First, he talked about economics and what is going to happen, in his opinion, if these control devices are forced on the automobile industry. He painted a very bleak picture for production problems as well as for employment in the automotive industry. He did not mince any words about that. And there are Members sitting on this floor today who were present at this presentation, and who had the opportunity to ask questions on that subject.

The second thing that he said that bothered me, and I think probably this is the most important thing, he pointed out that the catalytic converter is set for lead-free gasoline, and if you put in a gas tank full of regular, then you knock out your converter system, and destroy it.

But, Mr. Chairman, when we have gone into gas stations in the last 6 months, we have not asked the gasoline attendant for regular or for ethyl, or for lead-free gasoline; we have said, "What do you have?" And we have taken whatever he has had in order to keep our cars going. Even though a car might be set for ethyl, it will run on regular, and even though it is set for regular, it will run on ethyl, and even though it is set for regular or ethyl, it will run on lead-free gasoline. But when the 1975 models come out with their catalytic converters on them, and you drive into a gas station, and your gasoline tank is down to zero and the man says, "I'm sorry, but we do not have any lead-free gasoline," what do you do? Do you abandon your $5,000 automobile, or will you say, "I will take whatever you have got."

If we want to save lead-free gasoline for the areas shown on the map in red, maybe we ought to pass some law saying that lead-free gasoline should only go into the areas marked in red on the map so that those areas that need the catalytic converters on cars, and need the lead-free gasoline, will have that gasoline available. Thus, areas as San Francisco and Los Angeles will not have an additional problem in obtaining lead-free gasoline when we are in a gasoline shortage.

When we are in a gasoline shortage then we ought to funnel that lead-free gasoline to those areas where it will do the most good. Let us let the ethyl and regular gasoline go into the other areas.

Let us adopt the amendment offered by the gentleman from New Hampshire (Mr. Wyman) and then the lead-free gasoline which is in such short supply all over the country can be concentrated in areas such as California, so that they may use it to maintain their air quality standards.

But for owners in those areas that do not need catalytic converters, and who go into a gasoline station where the only gas that they have is regular, or ethyl, and who do not have the lead-free gasoline, then

they will take whatever they can get so as to keep their $5,000 automobile running, then their catalytic converter is going to be destroyed and will not help insofar as pollution is concerned.

So I think that we should specify that the lead-free gasoline goes into those critical areas that need the catalytic converters, and then those other areas that do not need converters really should not have to have them. Because that catalytic converter is not going to last in any car if the owner finds that he cannot get the lead-free gasoline to use with it. The owner will take whatever kind of gasoline is available. And I think everybody in the United States is going to have the same identical problem unless we do something about it.

So it would seem to me that the thing to do would be to adopt the amendment offered by the gentleman from New Hampshire (Mr. Wyman) and do something to put the lead-free gasoline into those areas on the map that are designated in red so as to help those people with cars who are going to have the catalytic converters in 1975 and need the extra protection.

I would suggest, in connection with what I said in closing a few minutes ago, that if the gentleman is serious—and I know he is—that he come before our committee which has to act within 1 month, he and Mr. Wyman, and we can take care of the situation and debate it then. Then we can have all of the evidence from the different people.

If this bill does not pass now, there will be many thousands out of work at Chrysler within the next week or 2 weeks.

Mr. HUBER. I am of just the opposite opinion, that if the bill does pass, there may be thousands and thousands without jobs in the next 12 months.

Mr. WYMAN. Is it not a fact that if we take the suggestion of the chairman, the gentleman from West Virginia, on this point, the 1975 models will go into production with catalytic converters required for the entire country; is that not correct?

Mr. HUBER. That is correct, and we are going to knock the catalytic converter out on the first gas tank of non-lead-free gas. We are going to destroy the platinum used in the manufacture of the converter. The only places we can get platinum today are Russia and South Africa, so we are dependent upon Russia and South Africa in order to make our automobiles.

Mr. WYMAN. If the gentleman will yield further, for each barrel of crude oil, we get 5 to 6 percent less gallons of unleaded gasoline?

Mr. HUBER. Yes.

Mr. WYMAN. So the claimed 13-percent improvement against the 1974 automobiles for the catalytic converter is a fraud because we have a greater fuel penalty coming out of refinery losses before we ever get started.

Mr. STAGGERS. Every one of the automobile manufacturers say they are for this bill.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from New Hampshire (Mr. Wyman).

The question was taken, and the chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. DINGELL. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 169, noes 221, answered "present" 2, not voting 41, as follows:

[ROLL No. 200]

AYES—169

Abdnor
Andrews, N. Dak.
Archer
Arends
Ashbrook
Baker
Bauman
Beard
Bevill
Blackburn
Bowen
Bray
Breaux
Brinkley
Brooks
Broomfield
Broyhill, Va.
Burgener
Burke, Fla.
Burke, Mass.
Burleson, Tex.
Butler
Byron
Camp
Casey, Tex.
Cederberg
Chamberlain
Chappell
Clancy
Clawson, Del.
Cleveland
Cochran
Collier
Collins, Tex.
Daniel, Dan
Daniel, Robert W., Jr.
Danielson
Davis, S.C.
Denholm
Dennis
Devine
Dickinson
Dorn
Downing
Dulski
Duncan
Edwards, Ala.
Esch
Eshleman
Evins, Tenn.
Fisher
Flowers
Flynt
Fountain
Froehlich
Gettys
Giaimo
Ginn
Gonzalez
Goodling
Gray
Green, Oreg.
Griffiths
Gross
Gubser
Guyer
Hammerschmidt
Hanrahan
Hays
Henderson
Hicks
Hillis
Hogan
Holt
Hosmer
Huber
Hudnut
Hunt
Ichord
Jarman
Johnson, Colo.
Johnson, Pa.
Jones, Okla.
Jones, Tenn.
Ketchum
King
Kluczynski
Landgrebe
Latta
Litton
Lott
McClory
McCormack
McEwen
McKay
McSpadden
Madigan
Mahon
Mann
Mathis, Ga.
Mayne
Michel
Miller
Mills
Mizell
Mollohan
Montgomery
Nichols
O'Brien
O'Hara
Passman
Poage
Powell, Ohio
Price, Tex.
Quillen
Railsback
Randall
Rarick
Robinson, Va.
Roncalio, Wyo.
Rousselot
Runnels
Ruth
Ryan
Sandman
Sarasin
Satterfield
Scherle
Schneebeli
Sebelius
Shipley
Shriver
Shuster
Sikes
Skubitz
Slack
Snyder
Spence
Stanton, J. William
Steed
Steiger, Ariz.
Stephens
Stratton
Symms
Taylor, Mo.
Teague
Thone
Thornton
Towell, Nev.
Treen
Vander Jagt
Vigorito
Waggonner
Walsh
Wampler
Ware
Whitehurst
Whitten
Wilson, Bob
Wilson, Charles, Tex.
Wright
Wyatt
Wylie
Wyman
Yatron
Young, Alaska
Young, S.C.
Young, Tex.
Zion

NOES—221

Abzug
Adams
Addabbo
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Annunzio
Armstrong
Ashley
Aspin
Badillo
Bafalis
Bell
Bennett
Bergland
Biaggi
Biester
Bingham
Boggs
Boland
Bolling
Brademas
Brasco
Breckinridge
Brotzman
Brown, Mich.
Brown, Ohio
Broyhill, N.C.
Burke, Calif.
Burlison, Mo.
Burton
Carney, Ohio
Carter
Chisholm
Clausen, Don H.
Clay
Cohen
Collins, Ill.
Conable
Conlan
Conte
Conyers
Corman
Cotter
Coughlin
Cronin
Culver
Daniels, Dominick V.
Davis, Wis.
Delaney
Dellenback
Dellums
Dent
Derwinski
Dingell
Donohue
Drinan
du Pont
Eckhardt
Edwards, Calif.
Eilberg
Erlenborn
Evans, Ohio
Fascell
Fish
Flood
Foley
Ford
Forsythe
Fraser
Frelinghuysen
Frenzel
Frey
Fuqua
Gaydos
Gibbons
Gilman
Goldwater
Green, Pa.
Grover
Gude
Gunter
Hamilton
Hanley
Hanna
Hansen, Idaho
Harrington
Harsha
Hastings
Hawkins
Hechler, W. Va.
Heckler, Mass.
Heinz
Helstoski
Hinshaw
Holifield
Holtzman
Horton
Hungate
Hutchinson
Johnson, Calif.
Jones, Ala.
Jordan
Karth
Kastenmeier
Kemp
Koch
Kyros
Lagomarsino
Landrum
Leggett
Lent
Long, La.
Long, Md.
Lujan
Luken
McCollister
McDade
McFall
McKinney
Macdonald
Madden
Mallary
Maraziti
Martin, Nebr.
Mathias, Calif.
Matsunaga
Mazzoli
Meeds
Melcher
Metcalfe
Mezvinsky
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Moss
Murphy, N.Y.
Murtha
Natcher
Nedzi
Nelsen
Obey
O'Neill
Owens
Patten
Perkins
Pettis
Peyser
Pike
Podell
Preyer
Price, Ill.
Pritchard
Rangel
Rees
Regula
Reuss
Rhodes
Riegle
Rinaldo
Robison, N.Y.
Rodino
Roe
Rogers
Rooney, Pa.
Rosenthal
Rostenkowski
Roush
Roy
Roybal
Ruppe
St Germain
Sarbanes
Schroeder
Seiberling
Shoup
Sisk
Smith, Iowa
Smith, N.Y.
Staggers
Stanton, James V.
Stark
Steele

Steelman	Udall	Wilson,
Steiger, Wis.	Ullman	Charles H.,
Stuckey	Van Deerlin	Calif.
Studds	Vander Veen	Winn
Sullivan	Vanik	Wolff
Symington	Veysey	Wydler
Talcott	Waldie	Yates
Taylor, N.C.	Whalen	Young, Fla.
Thomson, Wis.	White	Young, Ga.
Tiernan	Widnall	Young, Ill.
Traxier	Wiggins	Zablocki
		Zwach

ANSWERED "PRESENT"—2

Lehman Parris

NOT VOTING—41

Alexander	Haley	Patman
Barrett	Hansen, Wash.	Pepper
Blatnik	Hébert	Pickle
Brown, Calif.	Howard	Quie
Buchanan	Jones, N.C.	Reid
Carey, N.Y.	Kazen	Roberts
Clark	Kuykendall	Roncallo, N.Y.
Crane	McCloskey	Rooney, N.Y.
Davis, Ga.	Martin, N.C.	Rose
de la Garza	Milford	Stokes
Diggs	Minshall, Ohio	Stubblefield
Findley	Murphy, Ill.	Thompson, N.J.
Fulton	Myers	Williams
Grasso	Nix	

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. STAGGERS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in order to get some accommodation on further amendments. I know the gentleman from North Carolina has amendments, which I think we on the committee will accept when we have heard them, but I would like to get some understanding on concluding the debate tonight.

Mr. Chairman, I ask unanimous consent that the committee complete its debate on this bill and all amendments thereto at 6 o'clock.

Mr. WYMAN. Mr. Chairman, I reserve the right to object.

Mr. VANIK. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

MOTION OFFERED BY MR. STAGGERS

Mr. STAGGERS. Mr. Chairman, I move that all debate on this bill and all amendments thereto close at 6 o'clock.

Mr. WYMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the gentleman knows, I assume, that I have another amendment on the catalytic converter. Does the gentleman wish to limit the debate on this to 20 minutes?

Mr. STAGGERS. If the gentleman will yield, Mr. Chairman, we have debated for 2 hours or more, and I think the gentleman will have time reserved. The gentleman will have 5 or 10 minutes. I think we are

going to accept the amendment offered by the gentleman from North Carolina (Mr. Broyhill) and then we can proceed with other amendments.

Mr. Chairman, I renew my motion that all debate on this bill and all amendments thereto close at 6 o'clock.

The CHAIRMAN. The question is on the motion offered by the gentleman from West Virginia (Mr. Staggers).

The question was taken; and on a division (demanded by Mr. Derwinski) there were—ayes 104; noes 28.

So the motion was agreed to.

The CHAIRMAN. Members standing at the time the motion was made will be recognized for approximately 1 minute each.

The Chair recognizes the gentleman from North Carolina (Mr. Broyhill).

AMENDMENT OFFERED BY MR. BROYHILL OF NORTH CAROLINA

Mr. BROYHILL of North Carolina. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Broyhill of North Carolina: Page 76, line 17, insert before the comma the following: "(other than the Bureau of the Census, the Bureau of Labor Statistics, or the Internal Revenue Service)".

Mr. BROYHILL of North Carolina. Mr. Chairman, the purpose of [section 11] is to authorize the Administrator to obtain certain energy information and this subsection says that where this information is reported to certain other Federal agencies, these Federal agencies shall submit this information to the Administrator.

As the Members know, the present law restricts certain agencies from divulging information to other agencies of the Government, particularly the Internal Revenue Service, the Bureau of Census, and the Bureau of Labor Statistics.

So my amendment is saying that these agencies will not be required to report this information to the Administrator.

I yield to the gentleman from Texas, who is the chairman of the Census Subcommittee.

Mr. WHITE. Mr. Chairman, I support the amendment offered by the gentleman, and I ask unanimous consent to yield my time to the gentleman.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. ROUSSELOT. Mr. Chairman. I rise in support of the amendment offered by Mr. Broyhill of North Carolina. As ranking minority member of this subcommittee, I share the gentleman's concern that the confidentiality of the information collected by the Census Bureau—13 U.S.C. 9—must be preserved.

As currently provided in section 9 of title 13:

§ 9. Information as confidential; exception.

(a) Neither the Secretary, nor any other officer or employee of the Department of Commerce or bureau or agency thereof, may, except as provided in section 8 of this title—

(1) use the information furnished under the provisions of this title for any purpose other than the statistical purposes for which it is supplied; or

(2) make any publication whereby the data furnished by any particular establishment or individual under this title can be identified; or

(3) permit anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports.

No department, bureau, agency, officer, or employee of the Government except the Secretary in carrying out the purposes of this title, shall require, for any reason, copies of census reports which have been retained by any such establishment or individual. Copies of census reports which have been so retained shall be immune from legal process, and shall not, without the consent of the individual or establishment concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding.

(b) The provisions of subsection (a) of this section relating to the confidential treatment of data for particular individuals and establishments, shall not apply to the censuses of governments provided for by subchapter III of chapter 5 of this title, nor to interim current data provided for by subchapter IV of chapter 5 of this title as to the subject covered by censuses of governments, with respect to any information obtained therefor that is compiled from, or customarily provided in, public records (Aug. 31, 1954, ch. 1158, 68 Stat. 1013; Oct. 15, 1962, Pub. L. 87-813, 76 Stat. 922.)

The effectiveness of the Bureau's data-collecting activities is rooted in the fact that the confidentiality of the information submitted is safeguarded by the provisions in title 13 **[Sec. 11(e)]** of H.R. 14368 would seriously undermine the Bureau's ability to assure this confidentiality. In connection with the collection of energy information, under this subsection, the Administrator of a new Federal Energy Administration would have the authority, after determining that an individual has submitted information to the Census Bureau, to unilaterally "exempt" this individual, and then compel Census to provide this information.

Mr. Vincent Barabba, Director of the Bureau of the Census, appeared before our subcommittee in January to discuss the role of the Census with regard to energy statistics. In his statement, he discussed the importance of preserving the confidentiality of census information, and I quote:

The Bureau maintains a highly integrated system of production, distribution, and consumption statistics. In these areas we have, over the years, developed an expertise in survey techniques, as well as established reporting relationships with companies, which are unexcelled. There is no doubt that the provisions of Title 13, U.S. Code, which afford complete confidentiality to respondents, have also enabled us to build an invaluable working relationship with business firms, as well as the general public. We have developed an atmosphere of trust based on our past performance of not disclosing to or furnishing any person or group, public or private, with individual respondent data. Although Chapter 7 of Title 13 provides penalties for the falsifying of reported data or for the failure to report in mandatory surveys, it is the contract of trust that gets results rather than the invoking of penalties.

In early April, I participated in a special order which focused on the congressional commitment to privacy. The amendment being offered by Mr. White is a simple one, and would preserve the confidentiality of census information, and I urge all my colleagues who share my concern about protecting the privacy of our citizens to support this amendment.

Mr. BROYHILL of North Carolina. Mr. Chairman, I hope the chairman of the committee could accept this amendment.

Mr. STAGGERS. If I understand the amendment correctly, I would be inclined to agree with the gentleman and accept the amendment on this side as far as I am concerned.

Mr. DINGELL. As I understand it, the amendment then simply says the confidentiality in the Bureau of the Census and the Bureau of Labor Statistics——

Mr. BROYHILL of North Carolina. And the Internal Revenue Service.

Mr. DINGELL [continuing]. And the Internal Revenue Service continues to be preserved but that the information may be procured by the Administrator.

Mr. BROYHILL of North Carolina. That is correct.

Mr. DINGELL. I have no objection to the amendment.

Mr. BROYHILL of North Carolina. Mr. Chairman, may I have a vote now because I have another inquiry I would like to make.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina (Mr. Broyhill).

The amendment was agreed to.

Mr. BROYHILL of North Carolina. May I ask a question of the chairman?

In the latter part of section 11 the question or the allegation has been raised that where the energy information which has been supplied to the administration is then supplied to other agencies, such as the Federal Trade Commission, when that occurs it might destroy the confidential treatment of that information. I would like to have a response from the chairman with respect to those allegations.

Mr. STAGGERS. Mr. Chairman, in response to the gentleman, I might say that arguments have been raised that information which the Administrator supplies to the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the General Accounting Office would no longer be protected and could be freely disclosed by those agencies. That is not the case. The information would have the same right to confidential treatment in the hands of the Attorney General as it would in the hands of the Administrator. This principle of law was well established in the case of the *Grumman Aircraft Engineering Corp.* v. *Renegotiation Board* in 1970 (425 F. 2d 578).

Thus, the Attorney General could only release such information to subordinates or make use of it in law enforcement proceedings. However, like the Administrator, the Attorney General would be barred from releasing to the public trade secrets and other proprietary information.

Mr. MCCORMACK. Mr. Chairman, I am informed by Mr. Rogers, the Secretary of the Subcommittee on Public Health and Environment, that his subcommittee shall initiate hearings early in June on extension of the Clean Air Act which expires on June 30, 1974.

I am also informed by Mr. Rogers that in the extension of the Clean Air Act, we can amend the bill that we are working on at this time. I believe this to be quite important because I am disturbed with the bill before us today insofar as its provisions for the burning of coal are concerned. I think the bill's provisions are a sort of "chewing gum and baling wire" approach, and I think there is room for substantial improvement.

I, therefore, wish to take this opportunity to inform the Members of the House, the members of the Committee on Interstate and Foreign Commerce, and in particular Mr. Rogers and the members of the Subcommittee on Public Health and Environment that I shall appear before the subcommittee when it considers extension of the Clean Air Act to propose an amendment to that act. I will propose that provision be made for any utility with a powerplant burning coal to enter into an agreement on a 1-to-1 basis with the EOA to establish the best desulfurization technology available for the specific plant under consideration and the coal which it will burn. I will propose that under an agreement between EPA and the utility that the best desulfurization technology be agreed upon for each plant and the coal it will burn, provided that the additional cost required for amortization of the desulfurization equipment does not exceed 2 mills per kilowatt-hour, including all costs over a 10-year period. Incidentally, the costs will include any additional incremental cost for transportation of any fuel required under the agreement by EPA.

Under such an agreement, no other requirement for controlling or limiting sulfur dioxide emission would be made upon the plant during the 10-year period of amortization for the equipment; and operation of the plant would not be interfered with by EPA except in the case of an actual state of emergency for health purposes as determined and announced by the Environmental Protection Agency in the vicinity of the plant.

By following this technique of getting the best desulfurization equipment available installed in our coal-burning plants, we will be requiring that most sulfur dioxide be removed. Existing technology will do that. However, we will not be putting utilities in the unrealistic position of being forced to install very expensive scrubber systems or other similar gear which do not operate satisfactorily and which cannot meet today's air quality standards.

By requiring the best possible desulfurization technology at any given time we will, of course, be stimulating industrial competition in this arena. Perhaps over a period of 10 to 20 years we can develop at least one system which will actually meet the air quality standards we are now attempting to enforce.

I think this is a realistic approach. It allows this country to burn coal, and to have the maximum amount of electricity while protecting the environment in the most realistic way possible, protecting the utilities from administrative and economic harassment and working toward an actual solution to our air pollution problems.

AMENDMENT OFFERED BY MR. VANIK

Mr. VANIK. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Vanik: On page 68, line 2 strike "concerning the practicability of establishing a fuel economy improvement of 20 per centum for new model vehicles manufactured during and after model year 1980."

And substitute "concerning the feasibility of establishing at the earliest practicable date a national fuel economy standard of 20 miles per gallon for all new automobiles."

On page 68, line 6 after the word "to," add "an analysis of the various regulatory and tax policies which could be instituted to implement such standard;".

On page 29, line 14 strike "(1)".
On page 30, strike "Sec. 213 (a) (2)".

Mr. VANIK. Mr. Chairman, the amendment I offer seeks to improve the existing **section 9** of the committee bill. As it is now written, **section 9** calls for a study by EPA and the Department of Transportation to investigate the practicability of establishing a fuel economy improvement standard of 20 percent for new motor vehicles manufactured during and after model year 1980.

I am fearful that this language is not ambitious enough. A 20-percent improvement in fuel economy may sound significant, but a closer look reveals a different story. At present, the average American automobile gets about 13.5 miles per gallon. A 20-percent improvement would only result in a fuel economy of 16.2 miles per gallon for the average car. In essence then, what the existing **section 9** requests is a study of the consequences of setting a national fuel economy standard of 16.2 miles per gallon in model year 1980. Some automakers themselves are projecting more ambitious results. The fact is that we can produce automobiles which meet pollution standards—utilize powered accessories and air-conditioning. If foreign manufacturers can achieve this goal—our producers should be able to follow suit.

In short, I feel a more aggressive investigation of this vital area is needed.

To strengthen the mandate for this study, I am suggesting the EPA and the Department of Transportation study the feasibility of establishing a national fuel economy standard of 20 miles per gallon for all new automobiles. I am suggesting 20 miles per gallon because there have been many studies which assert that it is feasible for Detroit to manufacture—with existing technology—an automobile which gets close to 20 miles per gallon without sacrificing comfort, styling, or exhaust emission control. The problem we face is how to insure that Detroit will make this commitment to efficiency as rapidly as possible without at the same time causing severe economic disruptions. We must investigate the consequences of establishing a national fuel economy goal as well as investigating the best policy options we can follow to achieve this goal.

On August 24 of last year Under Secretary of the Interior John Whitaker endorsed a plan to tax inefficient automobiles in order to encourage Detroit to engineer efficiency into their product. At that time Mr. Whitaker stated that the administration fuel economy proposal would be ready by February 1974, as yet there has been no indication that the administration will submit such a plan. Apparently, the idea has fallen victim to the energy reorganizations in the executive branch. I might mention that **section 9** of this legislation, as drafted, would not include consideration for the policy alternative that Mr. Whitaker endorsed last August. This fact highlights the need to redraw the boundaries of the fuel economy study.

I commend the committee's foresight for recognizing that we must not sweep under the carpet the problem of inefficient automobiles. I seek with my amendment only to strengthen the mandate of this fuel economy study.

I hope the committee will accept my amendment.

Mr. STAGGERS. Mr. Chairman, I reluctantly state I have to oppose the amendment offered by the gentleman from Ohio. We do have a steady proportion in the bill now. It does not restrict it to 20 percent. I can go beyond that to any place it needs to be.

The Senate has agreed to the language of this bill. If we can pass this bill, it will be passed by the Senate, and it will go downtown to be signed by the President. Therefore, I would have to oppose the amendment in its entirety, and I hope that the House will oppose the amendment and take the bill as it is as it came out of the committee unanimously.

Mr. HASTINGS. Mr. Chairman, I rise in opposition to the amendment and ask that it be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. Vanik).

The question was taken; and on a division (demanded by Mr. Vanik), there were—ayes 23, noes 61.

So the amendment was rejected.

The CHAIRMAN. The Chair recognizes the gentleman from New Hampshire.

AMENDMENT OFFERED BY MR. WYMAN

Mr. WYMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Wyman: Page 59, strike out line 13 and all that follows down through line 11 on page 61, and insert in lieu thereof the following:

"(a) **Section 202(b)(1)(A)** of the Clean Air Act is amended to read: "The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured for sale during or after model year 1975 shall contain standards which are identical to the standards which were prescribed (as of July 3, 1971) for light-duty vehicles and engines manufactured during model year 1974, except that no certificate of conformity pursuant to section 206 of such Act shall be required for light-duty vehicles and engines manufactured for sale during model year 1975.

"(b) **Section 202(b)(1)(B)** of such Act is amended to read: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen for light-duty vehicles and engines manufactured for sale during and after model year 1975 shall contain standards which are identical to the standards which were prescribed (as of July 3, 1971) for light-duty vehicles and engines manufactured during model year 1974, except that no certificate of conformity pursuant to section 206 of such Act shall be required for light-duty vehicles and engines manufactured for sale during model year 1975."

Mr. WYMAN. Mr. Chairman, by the action taken on the earlier amendment that I offered, it has been determined now that all cars all over America shall have to continue to conform to the excessively far-ranging standards in the Clean Air Act that apply nationwide. This present amendment would freeze for 1 year the 1974 standards and suspend the certification procedures for a year in order to give a year's extension to allow a more careful approach to the expensive catalytic converter question.

The catalytic converter is a fraud on the country. One of our automobile manufacturers, General Motors, has a plant which is about to manufacture 6 million of these converters, so GM no longer has a neutral position on this issue.

If this amendment is agreed to, then we will not have to take the catalytic converter route until we know the catalytic converter will really work.

In the debate earlier it was pointed out again and again that proper action of the catalytic converter will require unleaded gasoline. All 1975 cars are going to be made with a neck on the gas receiver that comes out from the tank able to be fed only by a certain type of gas nozzle. All over America stations are going to have to have huge capital costs expended on putting in the unleaded gas and new equipment for the special pumps.

Mr. Chairman, there is absolutely no need to do this. It is going to add about $150 to the cost of each car. If we have a run of 9 million cars in 1975 production we are talking about $1.5 billion additional cost on the American consumer for the converters alone to say nothing of the several hundred million additional for the equipment to service them. The sticker price on new cars is going to go up by $150 more and the fuel consumption will be greater with the catalytic converter no matter what is claimed about the saving against the 1974 standards, because they will be getting less gallons of unleaded gas per barrel of crude oil.

Why not wait until we know more about the catalytic converter? I think we ought to do this much at the very least to hold the line for the consumers of this country and to help meet our energy shortages.

Mr. DU PONT. Mr. Chairman, I rise in opposition to the amendment because it seems to me from the testimony that was presented before the committee and from the information we have on the catalytic converter, that we will if we adopt the amendment today offered by the gentleman, freeze in the fuel penalty at the worst possible moment. We now have a 14-percent fuel penalty, roughly speaking, on our pollution control devices. If we adopt this amendment we are never going to be able to do any better than that because it is going to freeze it at the current level, and the 1975 converter will be better and will allow us more mileage.

Mr. HASTINGS. Mr. Chairman, for the reasons the gentleman from Delaware has stated and for the reasons that this would do damage to the Clean Air Act and to the automobile industry, I strongly oppose the amendment offered by the gentleman from New Hampshire.

Mr. WYMAN. Mr. Chairman, the gentleman states the standards for 1973 required only 3 parts per million hydrocarbon and 20 parts per million carbon monoxide. The 1974 standards cut this in half. There is absolutely no need to cut this in half. The Clean Air Act standards were far too high and there is no need to impose this on the American public.

Mr. ROGERS. Mr. Chairman, I strongly urge defeat of this amendment. All of the companies have testified that if the freeze ended in 1974 it would freeze it at a penalty loss. They are going to make a gas gain in 1975. It would be unbelievable to stop in 1974 when they are making progress.

I urge defeat of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Hampshire (Mr. Wyman).

The amendment was rejected.

Mr. ANDERSON of California. Mr. Chairman, I would like to ask the chairman, the gentleman from West Virginia (Mr. Staggers) a question. In the previous energy bill, S. 2589, as passed by both Houses of Congress, contained provisions for a Tijuana-Vancouver, high-speed, ground transportation system study. However, in this bill, H.R. 14368, as reported, this necessary study has been deleted. Yet, in so doing, according to the committee report on page 25, the committee states that it "did not intend to express any opposition to such a study or system." The committee merely felt that it should be conducted under the criteria set up by the Committee on Interstate and Foreign Commerce.

Because we on the west coast believe that this study is very urgent, how soon may we expect this study to be commenced by the Interstate and Foreign Commerce Committee?

Mr. STAGGERS. I would say as soon as the committee can get to it. We have some other business to take care of, such as railroad safety, railroad pensions, and the big railroad bill. When those are completed, we will get to this right away. We might be able to do it right along with our other work.

Mr. ANDERSON of California. Could we do it within the next 6 months?

Mr. STAGGERS. If possible.

The CHAIRMAN. All time has expired.

Are there further amendments?

If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Dorn, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 14368) to provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes, pursuant to H.R. 1082, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted in the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

Mr. HASTINGS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 349, nays 43, not voting 41, as follows:

[Roll No. 201]

YEAS—349

Abdnor
Adams
Addabbo
Alexander
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Archer
Arends
Armstrong
Ashbrook
Ashley
Aspin
Bafalis
Baker
Bauman
Beard
Bell
Bennett
Bergland
Bevill
Biaggi
Biester
Blackburn
Boggs
Boland
Bolling
Bowen
Brademas
Brasco
Bray
Breaux
Breckinridge
Brinkley
Brooks
Broomfield
Brotzman
Brown, Mich.
Brown, Ohio
Broyhill, N.C.
Broyhill, Va.
Burgener
Burke, Calif.
Burke, Fla.
Burke, Mass.
Burlison, Mo.
Butler
Byron
Camp
Carney, Ohio
Carter
Casey, Tex.
Cederberg
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Clancy
Clausen, Don H.
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Clay
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Cochran
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Conable
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Daniel, Robert W., Jr.
Daniels, Dominick V.
Danielson
Davis, S.C.
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Delaney
Dellenback
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Dent
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Dickinson
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Donohue
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du Pont
Eckhardt
Edwards, Ala.
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Giaimo
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Gonzalez
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Gubser
Gunter
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Hamilton
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Hansen, Idaho
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Hays
Heckler, Mass.
Heinz
Helstoski
Henderson
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Hillis
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Hungate
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Ichord
Jarman
Johnson, Calif.
Johnson, Colo.
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Jones, Ala.
Jones, Okla.
Jones, Tenn.
Jordan
Karth
Kemp
Ketchum
King
Kluczynski

Kyros
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Latta
Leggett
Lehman
Lent
Litton
Long, La.
Long, Md.
Lott
Lujan
Luken
McClory
McCollister
McCormack
McDade
McEwen
McFall
McKay
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Madigan
Mallary
Mann
Maraziti
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Mathias, Calif.
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Mitchell, N.Y.
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Mollohan
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Moorhead, Calif.
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Morgan
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Murphy, N.Y.
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Nedzi
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Obey
O'Brien
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Owens
Parris
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Patten
Perkins
Pettis
Peyser
Pike
Podell
Powell, Ohio
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Pritchard
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Randall
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Reuss
Rhodes
Riegle
Rinaldo
Robinson, Va.
Robison, N.Y.
Rodino
Roe
Rogers
Roncalio, Wyo.
Rooney, Pa.
Rostenkowski
Roush
Rousselot
Roy
Runnels
Ruppe
Ruth
Ryan
St Germain
Sandman
Sarasin
Satterfield
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Shipley
Shoup
Shriver
Shuster
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Slack
Smith, Iowa
Smith, N.Y.
Snyder
Spence
Staggers
Stanton, J. William
Stanton, James V.
Steed
Steele
Steelman
Steiger, Ariz.
Steiger, Wis.
Stephens
Stratton
Stuckey
Sullivan
Symington
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Teague
Thomson, Wis.
Thone
Thornton
Tiernan
Towell, Nev.
Traxler
Treen
Udall
Ullman
Van Deerlin
Vander Jagt
Vander Veen
Vanik
Veysey
Vigorito
Walsh
Wampler
Ware
White
Whitehurst
Whitten
Widnall
Wiggins
Wilson, Bob
Wilson, Charles H., Calif.
Wilson, Charles, Tex.
Winn
Wright
Wyatt
Wydler
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Wyman
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Young, Alaska
Young, Fla.
Young, Ill.
Young, S.C.
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Zwach

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Badillo	Harrington	Rosenthal
Bingham	Hechler, W. Va.	Roybal
Burleson, Tex.	Holtzman	Sarbanes
Burton	Kastenmeier	Schroeder
Chisholm	Koch	Stark
Coughlin	Lagomarsino	Studds
Dellums	Landgrebe	Waggonner
Drinan	Mahon	Waldie
Edwards, Calif.	Melcher	Whalen
Fascell	Mitchell, Md.	Wolff
Fisher	Poage	Yates
Fraser	Price, Tex.	Young, Ga.
Gibbons	Rangel	
Goldwater	Rarick	

NOT VOTING—41

Barrett	Haley	Nix
Blatnik	Hansen, Wash.	Patman
Brown, Calif.	Hébert	Pepper
Buchanan	Howard	Pickle
Carey, N.Y.	Jones, N.C.	Reid
Clark	Kazen	Roberts
Conyers	Kuykendall	Roncallo, N.Y.
Crane	McCloskey	Rooney, N.Y.
Davis, Ga.	McKinney	Rose
de la Garza	Martin, N.C.	Stokes
Diggs	Milford	Stubblefield
Findley	Minshall, Ohio	Thompson, N.J.
Fulton	Murphy, Ill.	Williams
Grasso	Myers	

So the bill was passed.

The Clerk announced the following pairs:

On this vote:

Mr. Hébert for, with Mr. Reid against.
Mr. Thompson of New Jersey for, with Mr. Conyers against.

Until further notice:

Mr. Howard with Mr. Barrett.
Mr. Stubblefield with Mrs. Hansen of Washington.
Mr. Carey of New York with Mr. McCloskey.
Mr. Rooney of New York with Mr. Williams.

SENATE DEBATE AND PASSAGE OF SUBSTITUTE AMENDMENT TO H.R. 14368, MAY 14, 1974

Energy Supply and Environmental Coordination Act of 1974

The Acting President pro tempore. Under the previous order, the Senate will now proceed to the consideration of H.R. 14368.

The Senate proceeded to consider the bill (H.R. 14368) to provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes, which was read twice by its title.

Mr. Robert C. Byrd. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged to either side.

The Acting President pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. Muskie. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The Acting President pro tempore. Without objection, it is so ordered.

Mr. Muskie. Mr. President, I call up my amendment No. 1303 to the pending measure and ask that it be stated.

The Acting President pro tempore. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. Muskie. Mr. President, I ask unanimous consent that the further reading of the amendment be dispensed with.

The Acting President pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

Section 1. Short Title; Purpose

(a) This act, including the following table of contents, may be cited as the "Energy Supply and Environmental Coordination Act of 1974".

TABLE OF CONTENTS

(b) The purpose of this Act is to provide for a means to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

SECTION 2. SUSPENSION AUTHORITY

Title I of the Clean Air Act is amended by adding at the end thereof the following new section:

"ENERGY-RELATED AUTHORITY

"Sec. 119. (a)(1)(A) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before the earlier of June 30, 1975, or one year after the date of enactment of this section, temporarily suspend any stationary source fuel or emission limitation as it applies to any person, if the Administrator finds that such person will be unable to comply with such limitation during such period solely because of unavailability of types or amounts of fuels. Any suspension under this paragraph and any interim requirement on which such suspension is conditioned under paragraph (3) shall be exempted from any procedural requirements set forth in this Act or in any other provision of local, State, or Federal law; except as provided in subparagraph (B).

"(B) The Administrator shall give notice to the public of a suspension and afford the public an opportunity for written and oral presentation of views prior to granting such suspension unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In any case, before granting such a suspension he shall give actual notice to the Governor of the State, and to the chief executive officer of the local government entity in which the affected source of sources are located. The granting or denial of such suspension and the imposition of an interim requirement shall be subject to judicial review only on the grounds specified in paragraphs (2)(B), (2)(C), or (2)(D) of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304(a)(2) or 307 (b) and (c) of this Act.

"(2) In issuing any suspension under paragraph (1) the Administrator is authorized to act on his own motion without application by any source or State.

"(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the source receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and (C) requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available to that person (as determined by the Administrator). For purposes of clause (C) of this paragraph, availability of natural gas or petroleum products which enable compliance shall not make a suspension inapplicable to a source described in subsection (b)(1) of this section.

"(4) For purposes of this section:

"(A) The term 'stationary source fuel or emission limitation' means any emission limitation, schedule, or time table for compliance, or other requirement, which is prescribed under this Act (other than section 303, 11(b), or 112) or contained in an applicable implementation plan (other than a requirement imposed under authority described in section 110(a)(2)(F)(v)), and which is designed to limit stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type or grade or pollution characteristic thereof.

"(B) The term 'stationary source' has the same meaning as such term has under section 111(a)(3).

"(b)(1) Except as provided in paragraph (2) of this subsection, any fuel-burning stationary source—

"(A) which is prohibited from using petroleum products or natural gas as fuel by reason of an order issued under section 8(a) of the Energy Supply and Environmental Coordination Act of 1974, or

"(B) which the Administrator determines began conversion to the use of coal as fuel during the ninety-day period ending December 15, 1973, and, consistent

with the criteria established in this section should use coal after the expiration of any suspension approved pursuant to section 119(a) of the Clean Air Act. and which is located in an air quality control region in which applicable national primary ambient air quality standards are not being exceeded and which converts to the use of coal as fuel, shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source. For purposes of this paragraph, the term 'began conversion' means action by the owner or operator of a source during the ninety-day period ending on December 15, 1973 (such as entering into a contract binding on the operator of the source for obtaining coal, or equipment or facilities to burn coal; expending substantial sums to permit such source to burn coal; or applying for an air pollution variance to enable the source to burn coal) which the Administrator finds evidences a decision (made prior to December 15, 1973) to convert to burning coal as a result of the unavailability of an adequate supply of fuels required for compliance with the applicable implementation plan, and a good faith effort to expeditiously carry out such decision.

"(2)(A) Paragraph (1) of this subsection shall apply to a source only if (I) the Administrator finds that emissions from the source will not cause or contribute to concentrations of air pollutants in excess of national primary ambient air quality standards and (II) if the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved, after notice to interested persons and opportunity for presentation of views (including oral presentation of views). A plan submitted under the preceding sentence shall be approved only if it (i) meets the requirements of regulations prescribed under subparagraph (B); and (ii) provides that such source will comply with requirements which the Administrator shall prescribe to assure that emissions from such source will not cause or contribute to concentrations of air pollutants in excess of national primary ambient air quality standards. The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

"(B) The Administrator shall prescribe regulations requiring that any source to which this subsection applies submit and obtain approval of its means for and schedule of compliance. Such regulations shall include requirements that such schedules shall include dates by which such sources must—

"(i) enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining a long-term supply of coal which enables such source to achieve the emission reduction required by subparagraph (C), or

"(ii) if coal which enables such source to achieve such emission reduction is not available to such source, enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining (I) a long-term supply of other coal or coal derivatives, and (II) continuous emission reduction systems necessary to permit such source to burn such coal or coal derivatives, and to achieve the degree of emission reduction required by subparagraph (C).

"(C) Regulations under subparagraph (B) shall require that the source achieve the most stringent degree of emission reduction that such source would have been required to achieve under the applicable implementation plan which was in effect on the date of enactment of this section (or if no applicable implementation plan was in effect on such date, under the first applicable implementation plan which takes effect after such date). Such degree of emission reduction shall be achieved as soon as practicable, but not later than January 1, 1979; except that, in the case a source for which a continuous emission reduction system is required for sulfur-related emissions, reduction of such emissions shall be achieved on a date designated by the Administrator (but not later than January 1, 1979). Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable including requirements described in clauses (A) and (B) of subsection (a)(3) and requirements to file progress reports.

"(D) The Administrator (after notice to interested persons and opportunity for presentation of views, including oral presentations of views to the extent practicable) (i) may, prior to the earlier of June 30, 1975, or one year after the date of enactment of this section, and shall thereafter prohibit the use of

coal by a source to which paragraph (1) applies if he determines that the use of coal by such source may cause or contribute to concentrations of air pollutants in excess of national primary ambient air quality standards; and (ii) may require such source to use coal of any particular type, grade, or pollution characteristic if such coal is available to such source. Nothing in this subsection (b) shall prohibit a State or local agency from taking action which the Administrator is authorized to take under this subparagraph.

"(3) For purposes of this subsection, the term 'air pollution requirement' means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including this Act (except for any requirement prescribed under this subsection, section 110(a)(2)(F)(v), or section 303), and which is designed to limit stationary source emissions resulting from combustion of fuels (including a restriction on the use or content of fuels). A conversion to coal to which this subsection applies shall not be deemed to be a modification for purposes of section 111(a)(2) and (4) of this Act.

"(4) A source to which this subsection applies may, upon the expiration of the exemption under paragraph (1), obtain a one-year postponement of the application of any requirement of an applicable implementation plan under the conditions and in the manner provided in section 110(f).

"(c) The Administrator may by rule establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out subsection (b) shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to users in air quality control regions with the most severe air pollution. No rule under this subsection may impair the obligation of any contract entered into before enactment of this section. To the extent necessary to carry out this section, the Administrator may prohibit any State or political subdivision from requiring any person to use a continuous emission reduction system for which priorities have been established under this subsection except in accordance with such priorities.

"(d) The Administrator shall study, and report to Congress not later than six months after the date of enactment of this section, with respect to—

"(1) the present and projected impact on the program under this Act of fuel shortages and of allocation and end-use allocation programs;

"(2) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction systems would have on the total environment and on supplies of fuel and electricity;

"(3) the number of sources and locations which must use such technology based on projected fuel availability data;

"(4) priority schedule for implementation of continuous emission reduction technology, based on public health or air quality;

"(5) evaluation of availability of technology to burn municipal solid waste in these sources including time schedules, priorities analysis of unregulated pollutants which will be emitted and balancing of health benefits and detriments from burning solid waste and of economic costs;

"(6) projection of air quality impact of fuel shortages and allocations;

"(7) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time frames prescribed in the Act, including associated considerations of cost, time frames, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

"(8) proposed allocations of continuous emission reduction systems which do not produce solid waste to sources which are least able to handle solid waste byproducts of such systems; and

"(9) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentration of sulfur dioxide in the ambient air.

"(e) No State or political subdivision may require any person to whom a suspension has been granted under subsection (a) to use any fuel the unavailability of which is the basis of such person's suspension (except that this preemption shall not apply to requirements identical to Federal interim requirements under subsection (a)(3)).

"(f)(1) It shall be unlawful for any person to whom a suspension has been granted under subsection (a)(1) to violate any requirement on which the suspension is conditioned pursuant to subsection (a)(3).

"(2) It shall be unlawful for any person to violate any rule under subsection (c).

"(3) It shall be unlawful for the owner or operator of any source to fail to comply with any requirement under subsection (b) or any regulation, plan, or schedule thereunder.

"(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i)(3).

"(g) Beginning January 1, 1975, the Administrator shall publish at no less than one-hundred-and-eighty-day intervals, in the Federal Register, the following:

"(1) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (b) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsections.

"(2) Up-to-date findings on the impact of this section upon—

"(A) applicable implementation plans, and

"(B) ambient air quality.

"(h) Nothing in this section shall affect the power of the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.

"(i)(1) In order to reduce the likelihood of early phaseout of existing electric generating facilities, any electric generating powerplant (A) which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on January 1, 1974) of the operator of such plant, (B) for which a certification to that effect has been filed by the operator of the plan with the Environmental Protection Agency and the Federal Power Commission, and (C) for which the Commission has determined that the certification has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single one-year postponement as provided in paragraph (2).

"(2) Prior to the date on which any plant eligible under paragraph (1) is required to comply with any requirement of an applicable implementation plan, such source may apply (with the concurrence of the Governor of the State in which the plant is located) to the Administrator to postpone the applicability of such requirement to such source for not more than one year. If the Administrator determines, after balancing the risk to public health and welfare which may be associated with a postponement, that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increases to pay for such costs, and other appropriate factors, then the Administrator shall grant a postponement of any such requirement.

"(3) The Administrator shall, as a condition of any postponement under paragraph (2), prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph (2).

"(j)(1) The Administrator may, after public notice and opportunity for presentation of views in accordance with section 533 of title 5, United States Code, and after consultation with the Federal Energy Administrator, designate persons to whom fuel exchange orders should be issued. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any suspension under subsection (a) of this section or conversion to coal to which subsection (b) applies or of any allocation under section 8 of the Energy Supply and Environmental Coordination Act of 1974 or the Emergency Petroleum Allocation Act of 1973.

"(2) The Federal Energy Administrator shall issue exchange orders to such persons as are designated by the Administrator under paragraph (1) requiring the exchange of any fuel subject to allocation under the preceding Acts effective no later than forty-five days after the date of the designation under paragraph (1), unless the Federal Energy Administrator determines after consultation with the Administrator, that the costs or consumption of fuel, resulting from such exchange order, will be excessive.

"(3) Violation of any exchange order issued under paragraph (2) shall be a prohibited act and shall be subject to enforcement action and sanctions in the same manner and to the same extent as a violation of any requirement of the regulation under section 4 of the Emergency Petroleum Allocation Act of 1973."

SECTION 3. IMPLEMENTATION PLAN REVISIONS

Section 110(a) of the Clean Air Act is amended in paragraph (3) by inserting "(A)" after "(3)" and by adding at the end thereof the following new subparagraph:

"(B) For any air quality control region in which the Administrator determines the applicable primary air quality standard is being exceeded, the Administrator shall review the applicable implementation plan and no later than ninety days after such determination report to the State on whether such plan can be revised in relation to fuel burning stationary sources without interfering with applicable national primary ambient air quality standards which the plan implements. If the Administrator determines that any such plan can be revised he shall notify the State that a plan revision may be submitted by the State within three months after the date of notice to the State of such determination. Any plan revision which is submitted by the State after notice and public hearing shall be approved or disapproved by the Administrator, after public notice and opportunity for public hearing, but no later than three months after the date required for submission of the revised plan."

SECTION 4. MOTOR VEHICLE EMISSIONS

(a) Section 202(b)(1)(A) of the Clean Air Act is amended by striking out "1975" and inserting in lieu thereof "1977"; and by inserting after "(A)" the following: "The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5)(A) of this subsection for light-duty vehicles and engines manufactured during model year 1975."

(b) Section 202(b)(1)(B) of such Act is amended by striking out "1976" and inserting in lieu thereof "1978"; and by inserting after "(B)" the following: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that emissions of such vehicles and engines may not exceed 2.0 grams per vehicle mile."

(c) Section 202(b)(5)(A) of such Act is amended to read as follows:

"(5)(A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within sixty days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977."

(d) Section 202(b)(5)(B) of the Clean Air Act is repealed and the following subparagraphs redesignated accordingly.

SECTION 5. CONFORMING AMENDMENTS

(a)(1) Section 113(a)(3) of the Clean Air Act is amended by striking out "or" before "112(c)", by inserting a comma in lieu thereof, and by inserting after "(hazardous emissions)" the following: ", or 119(f) (relating to energy-related authorities)".

(2) Section 113(b)(3) of such Act is amended by striking out "or 112(c)" and inserting in lieu thereof ", 112(c), or 119(f)".

(3) Section 113(c)(1)(C) of such Act is amended by striking out "or section 112(c)" and inserting in lieu thereof ", section 112(c), or section 119(f)".

(4) Section 114(a) of such Act is amended by inserting "119 or" before "303".

(b) Section 116 of the Clean Air Act is amended by inserting "119 (b), (c), and (e)," before "209".

SECTION 6. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT

(a) Any allocation program provided for in section 8 of this Act or in the Emergency Petroleum Allocation Act of 1973 shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the country designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

(b) In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal to which section 119 of the Clean Air Act applies, the Department of Health, Education, and Welfare shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c) No action taken under the Clean Air Act, or under section 8 of this Act for a period of one year after initiation of such action, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856). However, before any action under section 8 of this Act that has a significant impact on the environment is taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under section 8 of this Act which will be in effect for more than a one-year period or any action to extend an action taken under section 8 of this Act to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act notwithstanding any other provision of this Act.

SECTION 7. REPORTS

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 2 through 6 of this Act.

SECTION 8. COAL CONVERSION AND ALLOCATION

(a) The Federal Energy Administrator shall, to the extent practicable and consistent with the purposes of this Act, by order, prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this Act, has the capability and necessary plant equipment to burn coal. Any installation to which such an order applies shall not be prohibited from using petroleum products or natural gas unless the installation is located in a region described in the first sentence of section 119(b)(1), and the Administrator has made the finding specified in section 119(b)(2)(A)(I) with respect to emission from such installation. A prohibition on use of natural gas and petroleum products under this subsection shall be contingent upon the availability of coal, coal transportation facilities, and the maintenance of reliability of service in a given service area. The Federal Energy Administrator may require that fossil-fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable of using coal as a primary energy source instead of or in addition to other fossil fuels. No fossil-fuel-fired electric powerplant may be required under this section to be so designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) an adequate and reliable supply of coal is not available and is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Federal Energy Administrator shall consider the existence and effects of any contractual

commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

(b) The Federal Energy Administrator may by rule prescribe a system for allocation of coal to users thereof in order to attain the objective specified in this section.

(c) It shall be unlawful for any person to violate any provision of this section, or to violate any rule, regulation, or order issued pursuant to any such provision.

(d)(1) Whoever violates any provision of subsection (c) shall be subject to a civil penalty of not more than $2,500 for each violation.

(2) Whoever willfully violates any provision of subsection (c) shall be fined not more than $5,000 for each violation.

(3) It shall be unlawful for any person to offer for sale or distribute in commerce any product or commodity in violation of an applicable order or regulation issued pursuant to subsection (b). Any person who knowingly and willfully violates this paragraph after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to subsection (b) shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(4) Whenever it appears to any person authorized by the Federal Energy Administrator to exercise authority under this section that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of subsection (c), such person may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may be also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by subsection (c).

(5) Any person suffering legal wrong because of any act or practice arising out of any violation of subsection (c) may bring an action in a district court of the United States without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this paragraph shall authorize any person to recover damages.

(e) Authority to issue orders, or rules under subsections (a) and (b) of this section shall expire on midnight, June 30, 1975, but the expiration of such authority shall not affect any administrative or judicial proceeding pending on such date which relates to any act or omission before such date.

SECTION 9. EXTENSION OF CLEAN AIR ACT AUTHORIZATIONS

(a) **Section 104** of the Clean Air Act is amended by striking "and $150,000,000 for the fiscal year ending June 30, 1974" and inserting in lieu thereof ", $150,000,000 for the fiscal year ending June 30, 1974, and $150,000,000 for the fiscal year ending June 30, 1975."

(b) **Section 212** of such Act is amended by striking "three succeeding fiscal years." and inserting in lieu thereof "four succeeding fiscal years.".

(c) **Section 316** of such Act is amended by striking "and $300,000,000 for the fiscal year ending June 30, 1974" and inserting in lieu thereof ", $300,000,000 for the fiscal year ending June 30, 1974, and $300,000,000 for the fiscal year ending June 30, 1975".

Mr. MUSKIE. Mr. President, the Committee on Public Works has again examined the legislation passed by the House to amend the Clean Air Act to facilitate energy conservation. We have determined, on the basis of information available to us, that the enactment of limited amendments to the Clean Air Act at this time will be of value.

We do not believe, however, that amendments as far-reaching as the House bill are necessary, and it is for that reason that the committee has taken the rather unusual step of meeting in executive session yesterday to consider the House bill, and to report, by way of this amendment, to the Senate as a whole those amendments which we consider to be necessary at this time. We bore in mind the admonition of the distinguished chairman of the full committee that we should at this point

separate from the controversial issues that have been generated by the attempts to enact emergency energy legislation those elements which are relatively noncontroversial, which have been agreed upon by a sufficient number on both sides of the Capitol so that they have a chance to reach the President's desk in the relatively near future, and it is in this spirit, Mr. President, that the Committee on Public Works has considered what is needed and proposes this amendment in the form of a substitute to H.R. 14368 which deals only with those aspects of the House bill which are critical. Not only is the Committee prepared to offer a substitute, but we are prepared to go immediately to the conference with the House Interstate and Foreign Commerce Committee for the purpose of determining what can be agreed upon at this time and sent to the President.

We believe that prior to the Memorial Day recess, the President can have legislation which is needed to continue the Nation's effort to achieve greater energy conservation and to provide the automobile industry with the certainty needed to proceed with the development, certification and production of 1976 model year automobiles.

Mr. President, the amendments which I have offered fall into five categories:

First, the committee proposes to modify the coal conversion proposal of the House to narrow its application to assure, at a minimum, protection of public health. **[Sec. 8.]**

Second, the committee proposes to limit exceptions to the Clean Air Act to permit coal conversions to areas where public health-related primary ambient air quality standards are not now exceeded. Further, no coal conversions could take place where the conversion itself would cause public health standards to be exceeded. **[Sec. 2, Sec. 119 CAA.]**

Third, the committee proposes to adopt an identical provision to the House bill relating to auto emissions to end any doubt as to what auto emission standards will be required for the 1976 model year vehicle. **[Sec. 4, Sec. 202(b) CAA.]**

Fourth, the committee proposal would clarify the relationship between the National Environmental Policy Act and the Clean Air Act. **[Sec. 6 ESECA.]**

Fifth, finally, the committee proposes to extend the Clean Air Act authorization for 1 year. **[Sec. 9.]**

Let me expand upon these points briefly, for the record.

The Committee on Public Works has tried to respond to the need to continue our efforts to utilize our domestic fuel supplies where such utilization will not interfere with the health of our people. We recognize that the winter of crisis is behind us. We have tried to anticipate future crises, whether those crises result from spot-shortages of fuel or international disputes.

It is in the context of standby authority and in recognition of the need to continue energy conservation efforts that this legislation is proposed. We are not, under the threat of crisis, abandoning our environmental goals, but we are trying to propose a mechanism which will balance those environmental goals with what we perceive to be the long-term energy needs of the country.

In addition to other provisions which are identical to the House bill and the earlier conference agreement, the committee has retained the

emergency suspension features of earlier proposals. Only the final date has been changed. Under this provision the Administration could waive, temporarily, clean air requirements where there was a demonstrated unavailability of conforming fuel. Waiver authority continues until June 30, 1975, but waivers can be granted only when fuels with the pollution characteristics required by State clean air implementation plans are unavailable. **[Sec. 2, Sec. 119(b) CAA.]**

The amendments to both the coal conversion and clean air section would, in accordance with a proposal advanced by Senator Buckley, prohibit coal conversion in air quality control regions where primary air quality standards for sulfur oxides and/or particulates are now being exceeded. **[Sec. 119(c)(2)(b) CAA.]**

Thus, there would be, by statute, a bar to further deterioration of already unhealthy air.

Further, pursuant to another Buckley amendment, no specific conversion could be ordered if the coal to be used in a specific facility would cause concentrations of SO_2 or particulate in excess of national primary ambient air qulaity standards. **[Sec. 119(d)(2)(A) CAA.]**

The floor is protection of public health. This floor combined with the June 30, 1975, expiration date on issuance of conversion orders, should assure minimal environmental risks while providing an adequate opportunity to examine the implications of the policy we propose. **[Sec. 119(b) CAA.]**

I would like at this point, Mr. President, to compliment the distinguished Senator from New York for these two amendments to the bill, which, in my judgment, improve it enormously.

In the near-term, coal conversions, resulting from this act may be as few as a dozen, but those conversions can and will take pressure off the oil market without endangering public health.

They can and will simulate long-term investment in development of domestic coal resources. And they can and will provide a basis for future legislation to increase our capability to use coal.

This limited program can and will be initiated while the Congress continues to review the Clean Air Act and examines the need for broader authority to reduce dependency on foreign fuels.

As a part of that review Congress must determine the extent to which our major fuel burning stationary sources are going to have multiple energy use and environmental control capacity. And we must determine the impact of such policies on consumers.

In order to examine the environmental implications of these proposals, the Administrator of the Environmental Protection Agency is required to report to Congress on the impact of conversion. **[Sec. 7.]**

Also, in order to maximize the potential use of limited resources, the Administrator is required to review State air quality implementation plans to determine whether or not different fuels with different pollution characteristics can be burned in designated air quality control regions without threatening public health. **[Sec. 3.]**

Under the Conference agreement of last year, this review triggered a mandatory revision of State clean air plans. Under this bill, the States retain the authority to determine whether or not, on the basis of the review by the Administrator, a revision of any aspects of applicable implementation plans is desirable. A key feature in the proposal

is the reaffirmation of State authority to make both clean air and economic growth decisions. **[Sec. 3, Sec. 110 CAA.]** For all practical purposes the preemption of prior legislation has been replaced with advice and assistance.

The committee bill also includes certain noncontroversial provisions of the House bill which have been before the Senate in the earlier, vetoed bill. I ask unanimous consent to include in the Record at the end of my remarks appropriate portions of that legislative history modified to reflect the changes in the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

[See exhibit 1, p. 384.]

Mr. MUSKIE. Mr. President, the committee bill does not include provisions of the House-passed bill relative to air quality transportation and land use controls; fuel economy studies; energy conservation studies; and energy company reporting.

The committee has incuded two additional amendments which were not included in the House-passed bill. We have extended for 1 year Clean Air Act funding authority. **[Sec. 9.]** Though we have commenced hearings to review the Clean Air Act and though we are committed to a thorough review before any necessary modifying legislation is proposed, we believe it is altogether possible that the schedule of congressional activities this summer and fall may make difficult full and adequate consideration of major changes in clean air policy.

The committee wants adequate time to review the act. We want to know the results of the reports required by these amendments, and we want to have an opportunity to review, in detail, the findings of the National Academy of Sciences, expected this summer, as to the adequacy of present health-related standards and the optional control strategies which might be available to achieve those goals.

It is our intention to continue this review through the fall, as the schedule of congressional activities permits. The committee would hope to have legislative proposals on the Clean Air Act completed by early in the next session of Congress.

Mr. President, another provision in this legislation relates to clarification of the relationship between the National Environmental Policy Act and the Clean Air Act. **[Sec. 6, Sec. 7 ESECA.]** As my colleagues know, at the time the National Environmental Policy Act was enacted in 1969, its principal sponsor, Senator Jackson, agreed with members of the Senate Public Works Committee that the environmental review procedures were intended to apply to mission agencies—agencies whose activities impacted the environment—and not to environmental protection agencies.

The courts have repeatedly upheld the position to which Senator Jackson and I agreed nearly 5 years ago. Unfortunately, the Environmental Protection Agency has chosen, as a result of the pressure from the other body, to ignore that intent, to ignore those court decisions, and to proceed to prepare environmental impact statements as required by section 102(2)(c) of the National Environmental Policy Act.

Mr. President, I am deeply concerned that this policy will result in extensive litigation which will interfere with both the goals and the time schedules of the Clean Air Act.

Let me provide just one example. Under the bill that passed the House and in accordance with the substitute proposed by the Senate, the auto industry could apply to the Administrator of the Environmental Protection Agency for an additional 1 year in which to meet statutory auto emissions standards. **[Sec. 4, Sec. 202(b)(5) CAA.]** Under the law, the Administrator would have 60 days in which to make his findings. Every Senator knows that the National Environmental Policy Act procedure requires much more than 60 days to prepare an impact statement. It would take but one court, holding that the Administrator's finding on this issue was subject to those procedures, to derail the production schedules of the auto industry. Chaos would result. The Congress would be asked to respond in a panic situation.

But it is not just this kind of major chaos which I fear. The Environmental Protection Agency has, under the Clean Air Act, a wide variety of responsibilities, including registration of fuel additives, regulation of toxic emissions, establishmment of test procedures for automobiles and other authorities which are major actions in the context of the proposed voluntary regulations. Should the policy forced on Administrator Train be held mandatory by the courts, the disruption to American business and the adverse impact on the environment could be equally severe.

We cannot afford to take the risk of creating confusion and doubt in the minds of the American people as to issues the magnitude of these. The amendment which is contained in the substitute would make clear, without any doubt, that regardless of Mr. Train's "voluntary" action, there is no legal responsibility on the part of the Agency to comply with the procedures of the National Environmental Policy Act. **[Sec. 6(c), Sec, 7(c)(2) ESECA.]** With the adoption of this amendment, Mr. Train could freely develop a policy examining the environmental and other implications of environmental regulations without sacrificing either environmental goals or regulatory certainty. He could determine the appropriate actions for this kind of review and he could make such review voluntarily. But there would be a statutory bar to any court holding that EPA's voluntary compliance with NEPA could be construed to be mandatory.

Mr. President, as I have indicated, we have tried to narrow these amendments to those which reflect our continuing concern with energy conservation and the critical need to answer pressing questions such as auto emission standards, Clean Air Act authorizations, and the NEPA/EPA controversy.

This is a good bill. It protects public health, but it permits coal conversion. It facilitates energy conservation. And it promotes self-sufficiency. It creates certainty for the auto manufacturers.

The bill provides adequate opportunity to review fully the implications of the 1970 Clean Air Act, taking maximum advantage of the studies of the National Academy of Sciences and others, and it clears up what I believe to be a grave and threatening controversy engendered as a result of the decision of application of NEPA to EPA.

I strongly urge that my colleagues adopt this substitute—and that they do so without amendment so that we may speedily go to conference, consider the other House proposals on which we have held no hearings, and return to this and the other body with a compromise

agreement which can be sent to the President in fulfillment of our responsibilities on this issue.

SECTION 2. SUSPENSION AUTHORITY

This bill adds a new **section 119** to the Clean Air Act which will permit the Administrator of the Environmental Protection Agency to suspend until not later than June 30, 1975—or 1 year after enactment—any stationary source fuel or emission limitation, either upon his own motion or upon the application of a source or a State, if the source cannot comply with such limitations because of the unavailability of fuel. The Administrator of the Environmental Protection Agency is directed to give prior notice to the Governor of the State and the chief executive of the local governmental unit where the source is located. He is also directed to give notice to the public and to allow for the expression of views on the suspension prior to granting it unless he finds that good cause exists for not providing such opportunity. Judicial review of such suspension would be restricted to certain specified grounds.

The Administrator is required to condition the granting of any suspension upon adoption of any requirements that he determines are reasonable and practicable. These interim requirements must include necessary reporting requirements, and a provision that the suspension would be inapplicable during any period when clean fuels were available to such source. The Administrator would be required to determine when such fuels were in fact available. It is the intent of the committee that the Administrator in making such determination take into consideration the costs associated with any changes that would be required to be made by the source to enable it to utilize such fuel. No source which has converted to coal under **section 119**, however, could be required under this provision to return to the use of oil or natural gas.

The suspension would also be conditioned on adoption of such measures as the Administratrator determines are necessary to avoid an imminent and substantial endangerment to the health of persons. This would authorize not only requirements that a facility shutdown during air pollution emergencies, but also—for example—a requirement that it keep a reserve supply of clean fuels on hand to be burned to avoid such emergencies.

In recognition of the need to balance energy needs with environmental requirements and the unique problems facing any source which converts to coal in response to the emergency, the amendment would authorize sources which are either ordered to convert to coal or which began to convert to coal during the 90-day period prior to December 15, 1973, to continue to use coal in compliance with the Clean Air Act as amended by this act, until as late as January 1, 1979. The authorization would only apply if the source were placed, after notice and opportunity for oral presentation of views, on a schedule approved by the Administrator of the Environmental Protection Agency. The schedule must provide a timetable for compliance with the fuel or emission limitations of the applicable implementation plan no later than January 1, 1979.

All compliance schedules under **section 119(b)** must also provide for compliance with interim requirements that will assure that the

source will not cause concentrations of pollutants in excess of primary standards.

The committee emphasizes that the Administrator would not be able to approve a plan under **section 119(b)** for a utility generally. Rather, each plan approval must be for a specific plant.

There are three basic reasons for the decision to encourage continued burning of coal until at least 1979. First, in order to encourage the opening of new coal mines to increase energy supplies, the committee intends to encourage an ongoing substantial demand for such coal. Without reasonable likelihood that new coal mines will be able to market their new production, the opening of new mines and expansion of existing mine capacity may be regarded too risky. Second, to the extent that electric generating powerplants can be encouraged to cease burning oil and natural gas, these fuels would be available to meet other energy needs, such as production of gasoline and home heating oil. Finally, since continuous emission reduction technology is available for sources such as homes, apartment houses, and small businesses, the purposes of the Clean Air Act can be better effectuated by having low pollution oil and natural gas burned to the maximum extent feasible, in sources for which no effective clean up technology is available.

The committee believes that the priority effort of each source which is subject to **section 119(b)** should be to obtain low sulfur coal. If an adequate, long-term supply of low sulfur coal is available to such a source, the Administrator should only approve a plan which requires its use—and thus compliance with air pollution requirements—as expeditiously as practicable. In such a case, the Administrator would have to disapprove a plan which proposed to wait until January 1, 1979, before beginning to burn low sulfur coal. The committee believes that requiring priority consideration of the use of nonmetallurgical low sulfur coal will reduce the likelihood of extended violation of applicable emission standards.

If a source unable to obtain an adequate, long-term supply of low sulfur coal, it may seek to come into compliance by use of a continuous emission reduction system or by use of coal byproducts which would achieve the required degree of emission reduction. In such case, the source would still be required to act expeditiously to obtain an adequate supply of coal. However, compliance with all air pollution requirements would be required not later than January 1, 1979, and by a date established by the Administrator.

It is expected that the Administrator would include, but would not be limited to, the following requirements in any compliance schedule:

First, the dates by which the source will solicit bids and enter into binding contractual agreements—or other equally binding commitment—for the procurement of an adequate fuel supply to permit continued long-term operation of the source;

Second, where the coal obtained by the source has sulfur content which will require installation of continuous emission reduction equipment to enable the source to comply with emission limitations, the dates for soliciting bids for such equipment, contracting for such equipment, and installation and startup of such equipment by a date that will permit a reasonable time for necessary adjustments of the equip-

ment to maximize the reliability and efficiency of the system prior to January 1, 1979; and

Third, reasonable interim measures which the source should employ to minimize the adverse impact on air quality.

In establishing date for contracting for coal, the Administrator should determine the earliest date that is reasonable and which will permit compliance by the time specified in this section. Because the dates for obtaining coal or continuous emission reduction systems may occur at approximately the same time for more than one source which may overburden suppliers, the Administrator is specifically authorized to establish differing dates for obtaining coal or such systems to insure availability of supplies of such coal or equipment. In making such decisions, it is expected that the Administrator will provide the earliest date for those sources in areas with the most serious pollution problems.

It is intended that when the coal available to the source necessitates the use of continuous emission reduction equipment for control of sulfur-related emissions, the source will have as much time as necessary to install the equipment and achieve timely compliance, in order to permit orderly development of technology.

In recognition of the complex factors involved in determining schedules for the various sources, the committee intends that the Administrator have broad discretion in prescribing and approving schedules of compliance to insure that sources meet the requirements of this section without overburdening production capacity for continuous emission reduction systems for sulfur control or causing unacceptable disruption in energy production capacity.

The committee does not intend to permit delay of existing compliance schedules for control of particulate emissions. Some slight delay may be necessary in light of revised compliance schedules for control of sulfur-related emissions. However, only such minor adjustments as the Administrator determines to be unavoidable should be permitted in existing compliance schedules and emission limitations for control of particulates.

SECTION 4: MOTOR VEHICLE EMISSIONS

The committee proposal amends **section 202** of the Clean Air Act to continue the emission standards established by the Administrator for 1975 model year automobiles during the 1976 model year. The effect of this provision is to maintain in the 1976 model year a Federal 49-State standard of 1.5 grams per mile of hydrocarbons, 15 grams per mile of carbon monoxide and 3.1 grams per mile of oxides of nitrogen, and a standard for California of 0.9 gram per mile of hydrocarbons, 9 grams per mile of carbon monoxide, and 2 grams per mile of oxides of nitrogen. These standards apply to automobiles produced by all manufacturers, whether or not any individual manufacturer had applied for or received a suspension under **section 202(b)(5)** previous to the enactment of this act.

The amendment provides that after January 1, 1975, an automobile manufacturer may seek a single 1-year suspension of the statutory standards for hydrocarbons and carbon monoxide applicable to the 1977 model year. The Administrator would be required to estab-

lish interim emission standards for 1977 model automobiles for hydrocarbons and carbon monoxide if he grants the suspension.

The bill amends **section 202(b)(1)(B)** of the Clean Air Act to establish a maximum emission standard for oxides of nitrogen of 2 grams per mile applicable nationwide to 1977 model year automobiles. This defers the previous statutory standard of 0.4 gram per mile of oxides of nitrogen until the 1978 model year. No administrative suspension would be possible from either the 1977 or 1978 standard. While the 1977 model year standard is a maximum of 2 grams per mile nationwide, under the amendment California retains the right under **section 209** of the Clean Air Act to seek a waiver for a more stringent standard.

The committee is concerned with what may be unwarranted or, at least, untimely changes in EPA's certification test procedures for new automobile emissions. It is intended that uncertainty as to requirements for compliance with such standards be minimized. Any changes in test procedures shall be kept to an absolute minimum and should occur only where such changes improve instrumentation, reduce cost of testing or improve the reliability and validity of the test results.

Mr. President, I ask unanimous consent to have printed in the Record from hearings we held on the NEPA–EPA problem, a portion of the opening statement I made undertaking to spell out the legislative history of the environmental impact statement; also portions of an exchange between Senator Baker and former EPA Administrator William Ruckelshaus defining the Agency's view with respect to its obligation under the National Environmental Protection Act; also a summary of excerpts from court decisions bearing on this issue, and a summary of NEPA's legislative history on this point to enlighten the Senate and round out the Record on this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

EXHIBIT 1

At this point I would like to refer to this committee's longstanding interest in the environmental performance of governmental agencies and programs outside the environmental agencies almost from the day that we assumed jurisdiction over air and water pollution.

We were concerned and challenged by the question that at the same time that we were writing tough policy enforcing the environmental performance standards upon the private sector that the Government itself, a major polluter, was not approaching the task with clean hands.

So each time that we undertook the consideration of legislation to toughen our policy with respect to the private sector, there were those in the private sector who said, "Now, when is Uncle Sam going to measure up to what you are asking us to do?"

So we wrote language into the environmental laws, precatory language largely, trying to prod the Department of Defense, the Corps of Engineers, the Atomic Energy Commission and other Federal agencies to develop an environmental conscience. When the National Environmental Policy Act came down the pipe it was decided to use that for this purpose.

The objective language was to stimulate the development of an environmental conscience in what we later came to describe as the environmental impact agencies. That is, those agencies of the Federal Government whose activity is impacted or impacted potentially in an unfavorable way upon the environment.

We decided to use the National Environmental Policy Act for that purpose. At the insistence of the Committee on Public Works a requirement was adopted, that these environmental impact agencies before they adopted any major action, policy

or program that impacted upon the environment to file an environmental impact statement.

It was not considered necessary that that requirement be imposed upon those agencies whose mission it was to protect the environment. So throughout our discussions we carefully distinguished between the environmental impact agencies and the environmental protection agencies.

It was clearly our intention (whether or not we succeeded in making that clear in the legislative history or in the statutes), to impose that requirement only upon the environmental impact agencies and that in all of our discussions, the conference between the Senate and the House, the conferences among Senators, we adopted that phraseology which didn't appear in the legislation.

We were distinguishing between the environmental impact agencies and the environmental protection agencies.

Our whole purpose, I will repeat, was to force the environmental impact agencies to take into account environmental impacts which could result from major actions taken by them. That pure and simple was the purpose.

We did not, deliberately did not want that requirement to be imposed upon the environmental protection agencies. Why not?

Number one, because it was the chief mission of environmental agencies to protect the environment. It wasn't an incidental, peripheral one. It was their chief mission.

Secondly, because it was, environmental standards to be applied were decided by the Congress of the United States and were not to be subjected to dilution by values brought into policy-making decisions by other agencies whose mission was otherwise.

We wanted the Act to impose environmental values upon the AEC, but we didn't want the Act to have the effect of permitting the AEC to impose their mission-oriented values upon EPA. That was our clear distinction.

The third reason was that, as we were writing the environmental laws, we were writing in very specific requirements as to deadlines, compliance schedules, implementation plans and so on, judicial review and all the rest.

Now to subject those very specific requirements that were written into law by the Congress of the United States to another procedure designed to be applied to misssion-oriented or other mission agencies would have the effect of delaying the procedures established in the environmental laws.

This was the rationale and it was one that was developed over a decade, Mr. Train. There is no doubt in the mind of any of us who were involved in shaping NEPA what our intent was. By and large, the courts up to this point have recognized that intent and have supported it. But now having given that brief review of this committee's involvement in that issue may I read the rest of my opening statement?

Those of us who helped to formulate NEPA undertook to structure that statute to avoid the confusion which would result from applying the procedural requirements of NEPA to the environmental agencies.

Subsequently this committee extended NEPA to certain water pollution control actions, construction grants and permits for new water pollution sources.

So this has been a deliberate policy and for three years EPA policy as articulated in regulations and litigations has recognized this intent. The courts have upheld this intent and now, if I understand what has happened on the other side of the Capitol in a change in policy, not preceded by a change in law, EPA proposes to abandon these principles.

What are the implications of this new policy? What would happen to the pace of environmental enhancement if the courts hold that the policy cannot be as selective as the proposed regulations specify?

What would happen to standards already set to actions already in progress?

Will established health-related air quality standards be suspended pending a NEPA review? Will existing implementation plans including compliance schedules, emission limits and transportation controls be suspended pending compliance with NEPA procedure and associated litigation.

What would be the impact on the judicial review procedures specified in the Clean Air Act if a separate, independent NEPA-related judicial review is available?

How will conflicts between statutory deadlines and NEPA's regulatory time constraints be resolved? How could variances such as those required this winter to cope with energy shortages have been approved without unacceptable delay?

These are but a few of the many questions raised by EPA's proposed reversal

of policy. It is because of those doubts that this policy must necessarily be the result of the legislative process. EPA is prohibited from complying with NEPA. To carry out the proposed policy requires a change in the law. The principal sponsor of NEPA in the other body has introduced such legislation.

I would hope that the result of these hearings would be the administrator's agreement that adhere to the legislative process and to abandon his unilateral course and reject this dubious policy.

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
Washington, D.C., October 3, 1973.

To Senator EDMUND S. MUSKIE.
From Leon G. Billings.
Subject Additional Issues Regarding NEPA–EPA.

Last Friday afternoon you asked for the basic arguments to justify the position that the application of the National Environmental Policy Act to the regulatory activities of the Environmental Protection Agency would be substantive rather than procedural. This issue was addressed in joint hearings with the Committee on Interior in March of 1972. At that time, Administrator Ruckelshaus testified that EPA did not believe that the procedures of NEPA were applicable to all environmental programs. The following statements from his testimony are relevant;

"Our programs fall into two groups according to the categories set forth in CEQ's guidelines on Federal agency responsibilities under NEPA. Under the guidelines, EPA, as an environmental regulatory Agency, was not responsible for preparing impact statements for its environmental regulatory activities, but was required to prepare them for its other activities.

"We believe that most of our standards setting and enforcement activities, including the pesticides registration, water quality standards approval and enforcement, standards setting implementation plans under the Clean Air Act, and others, fall within the category of environmental regulatory activities. Accordingly, we do not believe that NEPA required impact statements for our actions under these programs. Nor do we believe that this policy should be changed until the full implications and ramifications of such change have been thoroughly examined."

There was considerable discussion of the impact of applying NEPA to EPA in an exchange of correspondence between Senator Baker and the Administrator. In response to the question:

"Assuming for the purposes of this question that all EPA activities are held subject to NEPA by the judiciary, and assuming for the purposes of this question that no legislative or regulatory relief from such a holding is forthcoming, given the Calvert Cliffs doctrine that NEPA requires an overall 'balancing judgment' with respect to each 'major Federal action,' would you interpret NEPA in such a way as to:

"a. alter in any way your mandate under the Clean Air Act to establish ambient air quality standards with an adequate margin of safety at a level necessary to protect public health?

"b. alter in any way the mandate of the Clean Air Act that new source performance standards be established with reference to the best available technology?

"c. permit the EPA to modify any of its basic enabling statutes, on the basis of the 'balancing judgment,' so as to impose a less stringent standard than would otherwise have been imposed?

"d. similarly, permit the EPA to impose more stringent standards than those provided for in the basic enabling Acts; and if so, against what criteria?" . . .

Administrator Ruckelshaus replied:

"In short, EPA's basic enabling statutes specify the levels at which various standards must be set, and specify the factors that must be taken into account in setting the standards. We intend to comply with these Congressional directives, to the best of our ability. We do not think that we can violate these directives by making the standards either more stringent, or less stringent, than our basic enabling statutes.

"The point is that the preparation of environmental impact statements required under NEPA is designed to set forth information concerning the environmental consequences of proposed Federal actions, the alternatives to such actions,

and other related factors. The purpose of gathering this information is to lay a foundation for a balancing by the Agency. This balancing is intended to affect Federal decision-making to assure that environmental considerations be given appropriate weight.

"In other words, environmental impact statements are not merely sterile academic exercises; they are intended to—and they do—have an actual substantive effect on Federal agencies' decisions.

"Where Congress has specifically directed the factors to be considered in establishing environmental protective regulations, the Federal action often will be quite different from a decision which would result from balancing the broader range of values covered by NEPA. For these reasons, application of NEPA to our regulatory programs would pose a difficult dilemma. We cannot speculate what directives might be given to EPA by a court if it concluded that NEPA does apply to our environmental regulatory activities. As indicated above, we believe that the specific statutes governing our environmental regulatory programs are at least to some extent inconsistent with the provisions of NEPA. Therefore, if a court concludes that we are subject to NEPA it quite logically might also go on to direct that we disregard certain limitations imposed by our basic statutes. This in turn might require us to issue standards at levels either more stringent or less stringent than those called for by our basic statutes."

Citations on NEPA–EPA Questions

1. *Getty Oil Company* v. *Ruckelshaus* (3rd Circuit—September 12, 1972).

"It's apparent that the Clean Air Act itself contains sufficient provisions for the achievement of those goals sought to be attained by NEPA."

2. *International Harvester* v. *Ruckelshaus* (D.C. Circuit February 10, 1973).

"Although we do not reach the question whether EPA is automatically and completely exempt from NEPA, we see little need in requiring a NEPA statement from an agency whose raison d'etre is the protection of the environment and whose decision on suspension is necessarily infused with the environmental considerations so pertinent to Congress in designing the statutory framework. To require a "statement" in addition to a decision setting forth the same consideration, would be a legalism carried to the extreme."

3. *Appalachian Power* v. *EPA* (4th Circuit April 11, 1973).

"We are convinced that while NEPA applies to "all agencies of the Federal government" and requires an impact statement for every major Federal action "significantly affecting the quality of the human environment," it is inapplicable to the action of the Administrator in seeking, through the approval of State implementation plans, to improve "the quality of human environment." (The court also cited Getty Oil 467 F.2d 359)

4. *Duquesne Light Co.* v *EPA* (3rd Circuit June 5, 1973).

"Presented with the square holding of the 4th Circuit (Appalachian Power case), and the logically appeal pronouncements of this court, the District of Columbia Circuit Court and the District Court in Delaware, we hold that, in approving the State implementation plans, the Administrator is not required to meet the impact statement requirements of the NEPA—certainly in the context of this case."

5. *Anaconda* v. *Ruckelshaus* (10th Circuit August 8, 1973).

"The important point here is that the EPA's sole mission is to improve the quality of the human environment. To compel the filing of impact statements could only serve to frustrate the accomplishment of the Act's objectives. Moreover the legislative history which is developed in *Portland Cement Association* v. *Ruckelshaus* (D.C. Circuit June 29, 1973), clearly establishes that such a statement was not contemplated by Congress." Furthermore, no Court of Appeals has held that such an impact statement is necessary and the several decisions which have considered it have ruled that it is not. See *Appalachian Power* v. *EPA* 477 F. 2d 495, 4th Circuit April 11, 1973; *Duquesne Light Co.* v. *EPA* 3rd Circuit June 5, 1973; *Buckeye Power, Inc.* v. *EPA* 6th Circuit June 28, 1973; *International Harvester* v. *Ruckelshaus* (D.C. Circuit February 10, 1973).

6. *Essex Chemical Corporation* v. *Ruckelshaus* (D.C. Circuit September 10, 1973).

This case quotes the Portland Cement case and continues the view that the regulatory functions of EPA under the Clean Air Act, in this case the new source

performance standards under section 111, do not require environmental impact statements under NEPA. The court in Essex Chemical quoted the court decision in Portland Cement. "What is decisive, ultimately, is the reality that, section 111 of the Clean Air Act, properly construed, requires the functional equivalent of a NEPA impact statement."

I do not have copies of the Portland Cement case cited above or another case, *Buckeye Power, Inc.* v. *EPA* (6th Circuit, June 28, 1973). Both cases support the same concept.

1. Getty Oil.
Enforcement of a violation of a provision in an implementation plan.
2. International Harvester.
Section 202 automobile extension challenge.
3. Appalachian Power.
Challenge of approval of State implementation plan.
4. Duquesne Light.
Challenge of approval of State implementation plan.
5. Anaconda.
Challenge of substitution for State implementation plan.
6. Essex.
Challenge of new source performance standards.

Legislative History of NEPA

It was clearly intended, at the time Congress enacted NEPA, that environmental regulatory agencies such as those authorized by FWPCA and the Clean Air Act would not be subject to NEPA's provisions.

The debate in the Senate and the House at the time of approval of the Conference Report on NEPA is abundantly clear.

In a summary of major changes adopted by the Conference Committee which Senator Jackson (primary sponsor and floor manager of NEPA) included in the Record, the following statement appears:

"Many existing agencies such as the National Park Service, the Federal Water Pollution Control Administration, and the National Air Pollution Control Administration already have important responsibilities in the area of environmental control. The provisions of section 102 (as well as 103) are not designed to result in any change in the manner in which they carry out their environmental protection authority."

"It is not the intent of the Senate conferees that the review required by section 103 would require existing environmental control agencies such as the Federal Water Pollution Control Administration and National Air Pollution Control Administration to review their statutory authority and regulatory policies which are related to maintaining and enhancing the quality of the environment. This section is aimed at those agencies which have little or no authority to consider environmental values." (S. 17458—12–20–69)

Senator Muskie made the following statement as regards Senator Jackson's explanation:

"It is clear then, and this is the clear understanding of the Senator from Washington and his colleagues, and those of us who serve on the Public Works Committee, that the agencies having authority in the environmental improvement field will continue to operate under their legislative mandate as previously established. and that those legislative mandates are not changed in any way by Section 102–5." (p. 17458—12–20–69)

Also, in a colloquy with Senator Boggs, Senator Muskie extended his comments on the understanding of the Senate as regards the relationship between FWPCA and NEPA:

"Mr. Boggs. Am I correct that the thrust of the direction contained in S. 1075 deals with what we might call the environmental impact agencies rather than the environmental enhancement agencies, such as the Federal Water Pollution Control Administration or National Air Pollution Control Administration.

"Mr. Muskie. Yes. Sections 102 and 103, and I think Section 105, contain language designed by the Senate Committee on Interior and Insular Affairs to apply strong pressures on those agencies that have an impact on the environment—the Bureau of Public Roads, for example, the Atomic Energy Commission, and others. This strong language in that section is intended to bring pressure on those

agencies to become environment conscious, to bring pressure upon them to respond to the needs of environmental quality, to bring pressure upon them to develop legislation to deal with those cases where their legislative authority does not enable them to respond to these values effectively, and to reorient them toward a consciousness of and sensitivity to the environment.

Of course this legislation does not impose a responsibility or an obligation on those environmental-impact agencies to make final decisions with respect to the nature and extent of the environmental impact of their activities. Rather than performing self-policing functions, I understand that the nature and extent of environmental impact will be determined by the environmental control agencies.

With regard to the environmental improvement agencies such as the Federal Water Improvement Administration and the Air Quality Administration, it is clearly understood that those agencies will operate on the basis of the legislative charter that has been created and is not modified in any way by S. 1075." (S. 17460—12-20-69)

Finally during consideration of the NEPA Conference Report in the House of Representatives, the following exchange between Representative George Fallon and House floor manager Representative John Dingell appears:

"What would be the effect of this legislation on the Federal Water Pollution Control Agency?

Answer: Many existing agencies such as the Federal Water Pollution Control Agency already have important responsibilities in the area of environment control. The provisions of Sections 102 and 103 are not designed to result in any change in the manner in which they carry out their environmental protection authority. This provision is primarily designed to assure consideration of environmental matters by agencies in their planning and decision-making—but most especially those agencies who now have little or no legislative authority to take environmental considerations into account. (H. 13093—12-23-69)

SENATOR RANDOLPH ADVOCATES A RECONCILIATION OF ENVIRONMENTAL AND ENERGY POLICIES

Mr. Randolph. Mr. President, I hope that we can have a prompt and a reasoned discussion on the important matters that are contained in this action, finalized by the Public Works Committee yesterday.

Senator Jackson has informed me that there is no problem in the Interior and Insular Affairs Committee in reference to the Public Works Committee's action on this legislation today. There also will be an opportunity, of course, for the Senator from Washington (Mr. Jackson) or others of that committee, to discuss the matters in which they may be concerned.

The proposed committee substitute for the House-passed version of the Energy Supply and Environmental Coordination Act of 1974 is concerned with matters—and I emphasize this—matters that have previously been considered by the Senate.

For the most part, what we are doing here is amending the Clean Air Act to provide that statute with additional flexibility to adjust to the realities of uncertain and inadequate energy supplies and with adjustments in the schedule for meeting Federal automobile emission standards.

All of these items have been carefully considered in the past by the Committee on Public Works. We held extensive hearings last year and participated actively in the conference on the Emergency Energy Act which included the subject matter that will be discussed today.

Mr. President, the measure before us now originally was title II of S. 3267, the Standby Energy Emergency Authorities Act, which has been discussed in recent days in this body. Members of our committee

and others also have discussed the matters as part of the broader proposal presented by the Interior and Insular Affairs Committee.

Title II of that measure was deleted from the bill reported by the Committee on Interior and Insular Affairs. Since most of its provisions fall within the jurisdiction of the Committee on Public Works, we once again reviewed them in the context of the events of recent months.

During this period, members of our committee conferred with our colleagues in the House of Representatives, and it was agreed that the other body would act first on this legislation. The House did act and passed H.R. 14368 on May 1, 1974. The Committee on Public Works then met and approved the substitute version which, as I have indicated, is now before the Senate for consideration.

One of the problems that we have dealt with in this legislation, which is of great importance, is our efforts to be realistic in meeting problems imposed by inadequate and uncertain fuel supplies.

We recall, Mr. President, that last year during the energy crisis, particularly last winter, a number of electric generating plants were permitted to switch temporarily from the use of oil to coal.

The legislation we have in the Senate today clarifies and revises the legal basis for this coal conversion so that the Federal Energy Administrator can mandate this step, in appropriate cases, to provide substantial relief from the unavailability of short supplies of clean fuels. **[Sec. 8, Sec. 2(a) ESECA.]**

I turn aside at this moment to note that one firm, a utility company in New England, had purchased $20 million worth of coal, some 500,000 tons of coal, for use in its reconversion process. Waivers had been granted by the State of Massachusetts to permit this action. Then the Federal Environmental Protection Agency, acting, I am sure, on their interpretation, of the Clean Air Act found that the reconversion could not move forward, even for a temporary period of time.

Therefore, we provide in this legislation, for electric utilities and other major fuel-burning facilities to continue to burn coal after June 1975, when the present regulations, under the Clean Air Act, Mr. President, might prevent the necessary—and I use the word advisedly—burning of coal. My amendment contains language temporarily postponing compliance with certain standards of reduction of automobile emissions. These provisions are identical to those earlier approval—I want to emphasize "those earlier approved"—by the Senate and House conferees, and later ratified by the Senate itself.

This legislation clarifies and revises the legal basis for coal conversion so that the Federal Energy Administrator can mandate this step in appropriate cases to provide substantial relief from short supplies of the clean fuels. It provides authority to continue burning coal after June of 1975, when regulations under the Clean Air Act as it presently stands might prevent the necessary burning of coal.

The amendment also contains language temporarily postponing compliance with certain standards for the reduction of automobile emission standards. These provisions are identical to those earlier approved by a Senate-House conference and ratified by this body. **[Sec. 4, Sec. 202(b) CAA.]**

Mr. President, although the energy crisis has been temporarily alleviated, it is not over. Continuing energy shortages and the real prospect of future crisis are now part of our way of life.

The provisions of the legislation before the Senate are part of an arsenal that is being accumulated to help us react responsibly to present and potential energy supply situations. This measure must be passed so that we can meet without delay in conference with the House of Representatives to bring it to final action.

I hope that the Senate will act promptly and affirmatively so that we can go on to the next step in meeting the challenge imposed by the energy crisis.

Mr. President, since enactment of the Air Quality Act of 1967 and the Clean Air Amendments of 1970, the American people have not done well in finding a suitable, or equitable, balance between energy and the environment. I emphasize, energy and environment. For it seems that the advocates of both energy and the environment have adopted a national posture of one versus the other, to the substantial disadvantage of domestic energy supplies.

At stake now is the adequacy of the commitment by the Congress, by government, by industry, and by the American people toward simultaneous achievement of national environmental and energy goals. For we must assure that both these goals are not jeopardized.

Rather, we must achieve a reconciliation between the extreme positions of environmental advocates and the proponents of unconstrained energy consumption. For an equilibrium must be reached between the three forces of economic, social, and environmental interests.

The challenge is there, Mr. President, the question is one of national acceptance and a solid commitment by the American people toward meeting our country's social and energy policies consistent with a concurrent national commitment to environmental policies. The goal attendent to each of these policies can be achieved if the approachment of our national capability to their solutions is reasonable and not fanatical.

As a result of the recent oil embargo, the Congress and the American people are now faced with the formulation of national energy and environmental policies to insure sufficient domestic energy supplies to meet our country's long-term economic requirement—consistent with Federal and State long-term environmental goals.

Mr. President, the legislation under consideration today represents an initial attempt at a reconciliation between energy and environmental policies. The proposed amendments to the Clean Air Act were originally written last December by Senate and House conferees on S. 2589, the Emergency Energy Act of 1973. The legislation under consideration today, H.R. 14368, the Energy Supply and Environmental Coordination Act of 1974, represents a refinement on the earlier measure. Nevertheless, it must not be viewed as a final answer to our present need for a reconciliation of environmental and energy policies. Rather, H.R. 14368 must be viewed as a first attempt toward finding the equilibrium position between long-term economic, social, and environmental concerns—of which I spoke earlier.

Substantial increases in coal utilization will be required as part of the many faceted solution to our country's energy problem. The challenge will be to carry it out in an environmentally responsible manner at acceptable costs to the producer and consumer.

This legislation reaffirms that compliance with the primary ambient air quality standards advocated in the Clean Air Act is a basic environmental goal. While temporary variances in emissions standards will be necessary in some instances, handling these on a case-by-case basis rather than through blanket exceptions will allow the necessary consideration in arriving at decisions which are fair to the utilities concerned and at the same time provide maximum protection to air quality.

In 1967, when the Committee on Public Works formulated the Air Quality Act, we knew the full implications of the policies we were enacting would be difficult to predict. Later, in 1970 we knew the Clean Air Amendments represented perhaps the most significant economic policy to be enacted in the interest of promoting environmental quality.

The premises on which this legislation was formulated are still valid. And in formulating the Energy Supply and Environmental Coordination Act of 1974 every attention was devoted to assure the basic integrity of present Federal and State programs are not undermined because of an overreaction to the energy crisis facing our country.

It would be a mistake to view these amendments to the Clean Air Act as a retreat from our earlier commitment to clean air. Rather, they are a realistic short-term response to the current energy situation and a need to provide for coal reconversion in this legislation.

The extensions are simply temporary actions to deal with the next 5 years. As such this measure provides Federal and State government with realistic tools to cope with environmental-energy issues attendant to coal conversion.

The legislation authorizes the Federal Energy Administrator to direct the conversion of electric utilities and major industrial facilities with the capability to use coal to discontinue their use of natural gas or oil. **[Sec. 8, Sec. 2 ESECA.]** In order to facilitate these reconversions a 1-year exemption is provided from the requirements of the National Environmental Policy Act for an environmental impact statement. **[Sec. 6, Sec. 7 ESECA.]**

There then remains the need to provide a mechanism for addressing the issues attendant to present Federal and State air pollution control standards.

PRESENT EPA AUTHORITY

An examination of the present authority of the Environmental Protection Agency to resolve energy related problems leads to the following conclusions:

First, presently EPA can grant short-term variances at the request of a State. The legislation would provide the EPA with authority to grant such variances on its own motion. **[Sec. 2, Sec. 119(a)(2) CAA.]**

Second, in the recent Fifth Circuit Court of Appeals decision in Natural Resources Defense Council against EPA, the court held that the only procedure available for granting variances pursuant to the Clean Air Act is section 110(f). This bill would clarify EPA's authority for permitting fuel variances in the fifth circuit.

Third, although this is not necessarily the case, the EPA believes that its authority is largely restricted in granting variances to the terms submitted by a State. The legislation would clarify the EPA's

authority to impose interim requirements that both protect air quality and insure appropriate efforts are taken to secure continuous emission control systems or conforming fuels.

Fourth, although the Administration assumes it has authority to allow coal conversions in the furtherance of Project Independence, EPA cannot permit noncompliance with emission limitations or other terms of State implementation plans beyond statutory deadlines. The legislation would enable the EPA to allow short-term and intermediate-term conversions from oil to coal in many situations which might not qualify under present law.

Fifth, the EPA also is provided with complementary authority to allocate low-sulfur energy supplies to critical areas and sources in order to minimize adverse impacts on public health or welfare. **[Sec. 2, Sec. 119(f) CAA.]**

This legislation would provide a mechanism for providing temporary variances from applicable emission standards on a case-by-case basis rather than through blanket exceptions without provision for maximum protection of ambient air quality.

CLEAN AIR PROVISIONS

The clean air provisions incorporated in this legislation reflect a carefully thought out approach to reconciling the proached and a concomitant need for a greater reliance on coal if energy self-sufficiency is to be successfully approached and a concomitant need for protection of the long-term integrity of environmental protection programs. The measure under debate incorporates several minor modifications in the language of the House passed clean air provisions as well as the coal conversion provisions.

The intent is to provide a mechanism for the reconversion to coal of the few major energy facilities which now have the capability to use coal but are using natural gas and oil. Later, the Congress will examine the issues attendant both to requiring existing energy facilities to possess a dual fuel capability, including a coal burning capability. Now is not an appropriate time.

Mr. President, this legislation concerns itself with variances for the short-term appropriately termed phase 1 for an intermediate period, phase 2, and for a longer term situation, phase 3. The first phase authorizes temporary variances until June 30, 1975, to permit conversions from oil and natural gas to nonconforming coal in the face of immediate and short-term energy supply problems such as occurred both during the winter of 1972 to 1973 and during the OPEC embargo last winter. **[Sec. 2, Sec. 119 CAA.]**

Similar suspensions are available under H.R. 14368 for an intermediate term until January 1, 1979, with a potential additional 1-year extension, for those facilities which convert to coal on modified compliance schedules to achieve applicable clean air standards by 1979. **[Sec. 119(b) CAA.]**

This second phase provides for modification of State air quality implementation plans so that reconversions to coal may continue for a longer time. Under these provisions, a limited number of installations will be able to elect to continue to use noncomplying fuels beyond June 30, 1975. **[Sec. 119(b) CAA.]**

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In order to be eligible for this extension, emissions from the converted source cannot cause or contribute to ambient air quality levels in excess of national primary—or health related—ambient air quality standards conversions cannot take place in regions where the primary ambient air quality standards are presently being exceeded. **[Sec. 119(b)(2)(A) CAA.]**

Moreover, the new compliance schedule must mandate steady progress toward compliance with present emission limits which must be achieved not later than January 1, 1979. **[Sec. 119(b)(2)(C) CAA.]**

The modified air pollution control schedule must include dates by which the installation's owners must either enter into long-term contracts for low-sulfur coal or the necessary emission reduction systems to achieve compliance with applicable air pollution control standards.

EXTENSION OF MOTOR VEHICLE EMISSION STANDARDS

Transportation is a necessary service, and it is provided under an extensive system of Government regulations, often heavily subsidized by public funds. In many American cities, a pattern of decisions at all levels of Government has shaped a diffuse and auto-dependent transportation network. This network itself is often as much a source of air pollution and energy waste as the emissions from the individual automobiles themselves.

Actions at all levels of government will be required to change this. In the future, State and local governments will have to insure total transportation systems that are developed and operated so as to be consistent with environmental policies.

To date, principal air pollution control strategy has been federally established uniform automobile emission standards. Present emission control requirements stem from the Clean Air Amendments of 1970. In the interim period, however, it has become apparent that additional time is warranted for achievement.

In December 1973, the Senate passed S. 2772, a bill extending for an additional year the emission standards applicable to 1975 model automobiles. This action resulted from extensive study by the Committee on Public Works on the total question of motor vehicle pollution and the requirements for reducing it. The committee felt that this was the only change in the program that was warranted at that time.

On May 1, 1974, the House of Representatives passed H.R. 14368, containing similar provisions modeled on the earlier conference action on S. 2589, which was vetoed by the President.

This legislation provides for a 1-year extension of the 1975 emission standards for hydrocarbons and carbon monoxide and gives the Administrator of the Environmental Protection Agency the authority to grant another 1-year extension. **[Sec. 4, Sec. 202(b)(1)(A) CAA.]**

In addition, H.R. 14368 provides emission standards for oxides of nitrogen at 2 grams per mile in model year 1977, without any further extension of the statutory standards. **[Sec. 4, Sec. 202(b)(1)(B) CAA.]**

This measure does not represent a final decision by the Committee on Public Works on the appropriate standard for oxides of nitrogen or on the technology for control of automobile emissions, and their implication. Rather, the committee is simply taking necessary action to

give certainty to Detroit in its production for model years 1975 and 1976.

Mr. President, I should like to call on the Senator from Tennessee (Mr. Baker), on this particular for an explanation of the legislations as it affects the automobile companies. We are really working, in a sense, after the fact.

Mr. BAKER. The distinguished chairman is entirely correct. As a matter of fact, as he called my attention to this matter, I was in a conversation with the distinguished junior Senator from Michigan (Mr. Griffin), who was pointing out that we are in the untenable position of having forced the automobile industry into a situation where they soon will be technically in violation of the law because of our failure to date to amend the statute.

I think it is absolutely imperative from a moral standpoint, that we have an undoubted responsibility to attend to changes in the requirements of the law on automobile emissions, if for no other reason than to assure that we are being fair and square with the largest industry in the United States, the automobile industry.

We ought to keep in mind that we are not weakening the requirements of the environmental standards. We are maintaining and in some cases stiffening the requirements and are seeing to it that they are steadfastly adhered to in the automobile manufacturing industry.

The law now requires the automobile industry to devise environmental control systems. In effect they are saying to us: "You have made us do this and have caused us to spend upward of $1 billion, according to some estimates, to comply with the requirements, but you are not amending the law to permit us to come into compliance with the statutory requirements. You are requiring us to be in compliance with an extremely, stringent standard, one that we thought would be changed by now, and to go on with this business."

Our distinguished chairman, as usual, is absolutely right. We have not only a legal, but also a moral, obligation to get on with the business of making compliance with the standards a possibility.

It is my personal hope that we will act today and that the Senate will pass this bill today. I hope, then, that some staff lawyer in the automobile industry will report to his superiors that their company is no longer in legal jeopardy with respect to the emission standards.

Mr. RANDOLPH. Mr. President, I appreciate the opportunity to have had this colloquy and of raising this point with the able Senator from Tennessee (Mr. Baker).

OPEC OIL EMBARGO

The United States only option is our long-term interest in energy self-sufficiency. This entails a greater development of nuclear electric power and more importantly a significantly increased reliance on domestic coal resources beyond levels previously considered achievable.

Before the OPEC oil embargo last year our country's ad hoc energy policy was synonymous with an imported oil policy. Despite the effects of the embargo which dramatized the desirability for energy self-sufficiency, we are now returning to the earlier posture of looking to the Middle East for new energy supplies. Under current

projections by 1980 almost 50 percent, one-half of our oil supplies, would be coming from the Middle East.

Yet, recent events have demonstrated the fallacy of this proposed dependence on the Middle East—even from a short-term perspective. Yet, as a Nation, we are not taking the necessary steps to assure alternate domestic supplies. One such possibility is reconversion of electric powerplants and major industrial users of imported oil back to domestic coal supplies.

The primary lesson that is to be learned from the oil embargo is that air pollution control strategies that depend primarily on fuel-switching to foreign sources of low-sulfur oil are—as declared by Senator Baker on February 19, 1974, in this Chamber—"neither environmentally safe nor politically prudent." Quoting further from the remarks of my colleague from Tennessee, who is the ranking minority member from the Committee on Public Works, he observed:

> During the past several years, several air quality regions have depended heavily upon foreign low-sulfur oil to avoid serious air quality problems. It is ironic and tragic that these communities which had most rapidly moved to meet air standards in response to urgent health problems are now confronted by the ineffectiveness of their strategy.

Returning to a greater reliance on the utilization of domestic coal supplies is unlikely to expedite the achievement of environmental goals that go beyond the protection of public health to the protection of broader societal concerns such as welfare. However, as recent events exhibit, the goal of energy self-sufficiency also will lead our country to more reliable clean air programs.

COAL RECONVERSION

In response to the Arab oil embargo, the U.S. utility industries were encouraged by the Federal Government to convert some of their facilities from oil to domestic supplies of coal. As of the end of February, some 22 units at 11 locations on the east coast had responded and made such conversions. The resultant savings in February alone were 53,140 barrels of residual oil per day. And the estimated oil savings for March were slightly higher, 67,980 barrels per day.

These conversions were undertaken by utility executives in response to a special message by President Nixon and encouragement by then Federal Energy Office Administrator William E. Simon when our country was faced with a national energy emergency. Such conversions also were supported by the Congress.

However, there are indications that this program is now jeopardized. On April 24, 1974, Carl E. Bagge, president of the National Coal Association, sent a telegram to President Nixon urging a reaffirmation of the administration's support for coal reconversion, declaring:

> The virtual elimination of this program would also constitute a serious breach of faith with the coal industry. At the request of former FEO Administrator Simon and in agreements signed with the Cost of Living Council earlier this year, major coal producers agreed to invest in equipment needed to expand production so that the fuel requirements of the converted powerplants could be met. Yet now they face the prospect of having the coal but not the markets.

Encouraged by the Federal Government and the promise of appropriate legislation, some 22 units at 11 powerplants on the east coast had converted to coal by the end of February. The resultant savings

in February were 53,140 barrels per day of residual fuel oil or 13,280 tons per day of coal. For March, the estimated savings were slightly higher—67,980 barrels per day of oil or 16,996 tons per day of coal.

Another 15 electric powerplants with a total of 33 units have indicated they can and are willing to convert provided environmental, technical, transportation, and supply problems are solved. This second category represents a further savings of 113,991 barrels per day of oil or 28,498 tons per day of coal.

Yet on April 10, former Federal Energy Office Administrator William Simon testified before the House Government Operations Committee that because the air quality variances for all of these facilities—22 units—would expire by May 15, they would have to be reconverted back to oil.

In summary, the utility industry responded in good faith to the President's encouragement to convert to coal on either a short-term or long-term basis. Now even where a utility desires to remain on coal, reconversion to oil may be required. In short, the domestic coal industry responded to a national energy crisis but now that the crisis is over we are returning to oil ways—imported oil.

This legislation, however, enables those facilities which have access to coal supplies that do not cause or contribute to concentrations of air pollution in excess of national primary ambient air quality standards, to remain on coal subject to a commitment to meet applicable emission standards by January 1, 1979.

FEASIBILITY OF INCREASED COAL PRODUCTION

The National Coal Association estimated that the industry could produce an additional 50 million tons of coal over and above their earlier expectations for coal supply in 1974. The prediction was based on a number of assumptions. Among these were labor stability, effective enforcement of Federal and State mine, health and safety laws "without harassment or unnecessary mine closings" by inspectors, continued surface mining "with effective reclamation," adequate coal transportation, "use of present machinery and manpower without considering costs" and exemption from Federal price controls.

More recent information from the Federal Energy Office indicates that the demand for coal from expected reconversions would be less than the National Coal Association's estimate of 50 million additional tons of production capacity. Nevertheless, the association's statement points up the many problem areas affecting coal supplies which must be considered in evaluating the feasibility for a greater emphasis on coal conversion.

ENVIRONMENTAL IMPLICATIONS OF COAL CONVERSION

At the request of the Federal Energy Office, the Environmental Protection Agency conducted preliminary analyses of 37 identified electric powerplants which might be required to burn coal instead of oil. Although more detailed considerations are needed, as discussed in the March 1, 1974, EPA staff report; I quote:

> In many of the situations studied, the environmental suitability of conversions to coal is heavily time-dependent. It depends on the effectiveness (or existence) of emission control systems at the time of conversion.

In a number of the plants studied, the electrostatic precipitators have been allowed to deteriorate because there was not requirement for good operation once the unit was converted to oil. The collection efficiency for coal can only be approximated. Some utilities guess as low as 50 percent to 70 percent and one assumes nearly 0 percent because of the condition of the equipment. If coal were to be burned in such units before work could be done on the equipment, heavy emissions of particulate matter could be expected.

The time and feasibility of repair become important factors in assessing the environmental aspects of conversion. The units would, in many cases, have to be shut down during repair and maintenances and, since units burning coal are generally planned for base-loading, the shut-downs would have to be carefully scheduled. Estimates of time of repair range from a week or two to as high as 18 months.

Estimates of the feasibility of retrofit and the time required to install flue-gas desulfurization indicate that, in nearly all the plants studied, sulfur dioxide emissions would remain unchecked for much longer periods, and some cases for the life of the unit because of the infeasibility of installing such equipment.

The EPA staff report then adds the comment:

It should be noted that many powerplants would be environmentally suitable for coal-burning if the installation of good emission control systems preceded the use of coal.

Particular note should be made of the fact that reliable estimates of the quality of the coal that would be used in reconverted units was not available. However, as noted in the EPA staff report:

A clearer picture of the available coal and its quality will emerge before decisions are made and assessment of the environmental aspects of these conversions can be developed on more valid bases.

The EPA staff report then recommends:

Before any (final) decisions are reached, the range of possibilities should be discussed and the conversions and fuel qualities most responsive to both the supply of fuels and the environmental considerations selected.

Nevertheless, Mr. President, it was possible for the EPA staff to conduct preliminary analyses on the basis of carefully selected assumptions which are described in this excerpt from its report, that I request appear in the Record at this point in my remarks.

Data used in the modeling effort to define plant characteristics include: stack height, stack diameter, stack temperature and gas volume when the associated boilers are operating at full load, design fuel consumption for each boiler, and the excess air used. In most cases these data are the latest available from the Federal Power Commission Form 67, as reported by the power companies. When available updated are obtained from state and local pollution control agencies or from the plants themselves.

The fuel quality (percent sulfur, percent ash, and heat content) of fuels currently being burned is obtained from the FPC data. These parameters for the coal which the plant might be required to burn are estimated from data on current and projected supplies. For existing pollution control devices within each plant, a control efficiency is assumed considering design and test data, recent history of use and estimations from local agencies and the power companies. It is recognized that an electrostatic precipitator which has not been in use, or has been used in conjunction with an oil-fired boiler, will operate at an efficiency significantly less than the design efficiency. In many cases, two years or more may be required before maximum efficiency can be achieved.

Standard EPA methods are used to relate quantities of fuels burned and the resulting pollutants emitted. (Reference: "Compilation of Air Pollutant Emission Factors," U.S. Environmental Protection Agency publication No. AP–42, revised April, 1973.)

Mr. President, I also ask unanimous consent that there be printed in the Record at this point two tables which summarize the results of

these preliminary evaluations by the Environmental Protection Agency.

There being no objection, the tables were ordered to be printed in the Record, as follows:

CONVERSIONS TO RESPOND TO RESIDUAL OIL SHORTAGES WITHOUT SIGNIFICANT VIOLATIONS OF PRIMARY AMBIENT AIR QUALITY STANDARDS

Plant name, location	Urged to convert to coal in FEO telegram (26 plants)	EPA region	Units for conversion	Estimated oil savings (barrels/day)	Comments
Crystal River, Red Level, Fla.	No	IV	1	9,425	Measured air quality, modelling predictions low population impact and lack of other major sources in the area all make this plant a good candidate for short-term conversion. The particulate matter collection equipment should be put into good operation before conversion if possible.
			2	12,186	
Morgantown, Newburg, Md.	Yes	III	1	11,500	A good candidate for short-term conversion—no known air quality problems in impact area, good dispersion, good particulate matter collection, and no other large sources in area.
			2	11,500	
Chalk Point, Aquasco, Md.	No	III	1	[1] 2,500	A good candidate for short-term conversion—good particulate control, measured air quality acceptable, area thinly populated, no other large sources in area.
			2	[1] 2,500	
Sutton, Wilmington, N.C.	Yes	IV	1, 2	[1] 5,672	A good candidate for short-term conversion—no known air quality problems, dispersion appears good from the tall stacks, the short stacks may cause some problems, but they are not expected to be severe or frequent.
			3	[1] 3,539	
McManus, Brunswick, Ga.	Yes	IV	1, 2	7,890	A good candidate for short-term conversion—low population exposure, modelling predictions; some possible problems with TSP, but should not be severe.
England, Beesleys Point, N.J.	Yes	II	1, 2	[1] 9,920	A good candidate for short-term conversion—low population exposure, good air quality, modelling predictions, and no other major nearby sources.
Mt. Tom, Holyoke, Mass.	Yes	I	1	[1] 4,700	A good candidate for short-term conversion—good air quality, and low population exposure.
Danskammer, Rosetown, N.Y.	No	II	1	1,900	Tentative—A good candidate for short-term conversion—low population exposure, plus reasonably good air quality. No study of this plant has been requested by FEO.
			2	2,000	
			3	4,000	
			4	6,300	
Middletown, Middletown, Conn.	Yes	I	1	[1] 1,750	A good candidate for short-term conversion—low population exposure, and good air quality.
			2	[1] 3,540	
Montville, Montville, Conn.	Yes	I	1	110	A fair candidate for short-term conversion—major impact area has low population exposure and fairly good air quality; some possible problems in pollutant chanelling to nearby towns.
			2	85	
Salem Harbor, Salem, Mass.	No	I	1	[1] 1,200	A fair candidate for short-term conversion—modelling predictions fairly good air quality (AQ impact from plant less severe in winter than remainder of year).
			2	[1] 2,600	
			3	[1] 5,000	
Brayton Point, Fall River, Mass.	No	I	3	22,000	A fair candidate for short-term conversion—good dispersion, good particulate control, and fairly good air quality.
Chesterfield, Chester, Va.	Yes	III	6	12,300	A fair candidate for short-term coal conversion—good dispersion, good particulate control, and low density area.
Deepwater, Pennsgrove, N.J.	Yes	II	1	[1] 2,680	A marginal candidate for short-term conversion—marginal air quality, dense area.
			8	[1] 2,360	
Lovett, Tompkins Cove, N.Y.	Yes	II	4	[1] 3,630	A marginal candidate for short-term conversion—low population exposure; however, poor dispersion.
			5	[1] 4,150	
Schiller, Portsmouth, N.H.	Yes	I	4	1,000	A marginal candidate for short-term conversion—possible TSP problem.
			5	1,000	

CONVERSIONS TO RESPOND TO RESIDUAL OIL SHORTAGES WITHOUT SIGNIFICANT VIOLATIONS OF PRIMARY AMBIENT AIR QUALITY STANDARDS—Continued

Plant name, location	Urged to convert to coal in FEO telegram (26 plants)	EPA region	Units for conversion	Estimated oil savings (barrels/day)	Comments
Burlington, Burlington, N.Y.	Yes	II	5	[1] 2,500	A marginal candidate for short-term conversion—marginal air quality, dense impact area, and multiple industrial sources.
			6	[1] 2,500	
Far Rockaway, Far Rockaway, N.Y.	No	II	1	3,050	A marginal candidate for short-term conversion—marginal air quality, reasonable dispersion.
Bergen	Yes	II	1	[1] 5,000	A marginal candidate for short-term conversion—marginal air quality, dense impact area, fairly good dispersion.
			2	[1] 5,000	
Total				176,987	

PLANTS CONSIDERED TO BE NOT ENVIRONMENTALLY ACCEPTABLE FOR SHORT TERM CONVERSIONS

Arthur Kill, Staten Island, N.Y.	No	II	30	12,400	Poor candidate for short-term conversion—poor air quality area.
Ravenswood, Queens, N.Y.	No	II	3N, 3S	25,600	Do.
Barrett, Island Park, N.Y.	Yes	II	1–2	9,300	Poor candidate for short-term conversion—marginal air quality, poor particulate control.
Albany, Albany, N.Y.	Yes	II	1–2–3–4	11,500	Poor candidate for short-term conversion—modelling predictions, poor particulate collection, terrain problems.
Gilbert, Milford, N.J.	Yes	II	1–2–3	2,610	Poor candidate for short-term conversion—modelling prediction, constrictive terrain.
Sayreville, Sayreville, N.J.	No	II	7–8	8,820	Poor candidate for short-term conversion—poor particulate control, poor air quality air quality area, dense population in impact area.
Barbados, West Morristown, Pa.	Yes	III	31	2,600	Poor candidate for short-term conversion—poor air quality area, industrial location, dense population in impact area, limiting terrain.
			41	2,600	
Cromby, Phoenixville, Pa.	No	III	2	6,800	Poor candidate for short-term conversion—short stacks, very hilly region large contribution to SO_2 concentrations, uncertain precipitator efficiency.
Edge Moore, Wilmington, Del.	No	III	1	1,743	Poor candidate for short-term conversion—poor particulate control, dense impact area, poor air quality.
			2	1,621	
			3	2,113	
			4	3,903	
Possum Point, Dunfries, Va.	Yes	III	1	1,940	Poor candidate for short-term conversion—poor particulate control, modeling predictions, poor disperson.
			2	1,940	
			3	3,200	
			4	6,720	
Vienna, Vienna, Md.	Yes	III	5	800	Poor candidate for short-term conversion—poor particulate control, modeling predictions.
			6	800	
			7	1,700	
Mason, Wiscasset, Maine	Yes	I	3	1,302	Poor candidate for short-term conversion—poor dispersion, modeling predictions of high SO_2 TSP concentrations.
			4	1,285	
Devon, Milford, Conn.	Yes	I	7, 8	7,534	Poor candidate for short-term conversion—poor air quality, probable high SO_2 impact.
Norwalk Harbor, Norwalk, Conn.	Yes	I	1, 2	4,500	Poor candidate for short-term conversion—poor air quality, dense impact area.
West Springfield, Springfield, Mass.	Yes	I	1, 2, 3	1,200	Poor candidate for short-term conversion—marginal air quality, disperson problems.
South Meadow, Hartford, Conn.	Yes	I	6, 7, 8	2,679	Poor candidate for short-term conversion—dense impact area, marginal air quality, poor particulate control equipment.
Somerset, Fall River, Mass.	No	I	1, 2, 3, 4, 5, 6	11,000	Poor candidate for short-term conversion—poor dispersion capability, poor particulate control, proximity to Brayton Point.
South Street St., Providence, R.I.	Yes	I	[1] 121	1,275	Poor candidate for short-term conversion—poor air quality, high density impact area, poor particulate control; since conversion to coal, substantial plume opacity problems and high coal readings of TSP and SO_2.
			[1] 122	774	
Total				146,680	

[1] These units converted to coal.

Mr. RANDOLPH. In summary, of the 37 plants and locations EPA studied, significant violations of the primary standard for either sulfur dioxide or particulates—and in some cases both—are possible in 18 of the situations. The EPA, however, was not able to qualify the degree of health endangerment in relation to the magnitude of the violation.

OTHER CLEAN AIR ENERGY POLICY ISSUES

Nevertheless, Mr. President, a number of other environmentally related energy policy issues remain. Our national objective is successful achievement of equitable energy and environmental goals. This will require the cooperation of and leadership from the electric utility industry.

What is clear, Mr. President, is that a concerted effort by the electric utility industry, by government, and by concerned environmental advocates is essential if we are to solve the complex interrelationships between clean air, available fuel supplies, energy demand and adequate and reliable supplies of electric power.

The overriding concern is how to direct the national capability that exists for air pollution control so that it initially achieves the maximum protection of public health and later is directed toward protection of public welfare.

On April 23, 1974, the Department of the Interior's Bureau of Mines released a report entitled, "Assessment of the Impact of Air Quality Requirements on Coal in 1975, 1977, and 1980."

This report concludes that if present Federal and State air pollution control standards are enforced in mid-1975, roughly one-third of the Nation's coal supply cannot be used without violating applicable standards. By 1977, the "deficit" in conforming coal with acceptable sulfur content could reach 254 million tons and it could grow to 275 million tons in 1980.

The Bureau concluded, however, that this shortfall could be reduced to as little as 199 million tons in 1975—and 190 million tons in 1980—if, first, stack gas "scrubbers" are widely used at new electric utility plants that cannot get conforming coal; second, if variances from clean air standards are provided for some of the facilities where the coal contains too much sulfur; or, third, if coal supplies can be better matched with emission standards by allocating coal supplies among various air quality control regions to reflect environmental factors.

With regard to stack gas cleaning the Environmental Protection Agency has stated that flue gas desulfurization facilities are available. Therefore, there does not appear to be a need for a shutdown of powerplants for nonconformity with air pollution requirements. The Environmental Protection Agency concluded in January 1974, that—

(1) * * * some utilities * * * have applied greater efforts to defending their lack of progress or to attempting to change existing emission requirements than they have in controlling CO_x emission.

(2) * * * Vendors * * * generally offer guarantees for these systems that are comparable to the guarantee provided for other equipment purchased by a utility * * * guarantees now offered by vendors are appropriate; * * * the utility creating the pollution must assume the remaining risks associated with control of that pollution.

(3) * * * these costs, while substantial, are reasonable and will not impose an undue burden on either the electric utility industry or its customers.

The Federal Power Commission disagrees with the Environmental Protection Agency. A February 25, 1974, report of the Federal Power Commission declared that strict adherence to 1975 air pollution control standards on a national basis will endanger the reliability of electric service in seven out of the nine electric reliability regions. The areas most severely affected will be the East Central Area Reliability Council, Southeastern Electric Reliability Council, and Mid-America Interpool Network, which together cover about a third of the country.

The Federal Power Commission concluded that if variances are not granted for this affected capacity, either to burn available fuels or use some form of supplemental controls, a deficient power supply situation would prevail and curtailments of electric service would be necessary. The noncomplying capacity in 1975 would be in Ohio, Indiana, West Virginia, Kentucky, Tennessee, Alabama, Illinois, and Missouri.

In summary, the Federal Power Commission is of the opinion that flue gas desulfurization facilities are neither available in the quantity needed nor do they have a reliability compatible with operating steam electric plants. Even when emission control systems of demonstrated reliability become available, considerable time will be required to retrofit existing generation facilities.

CONCLUSION AND RECOMMENDATION

During my 15½ years in the Senate, I have been deeply involved in energy and environmental questions. Throughout this period there has been an inclination by some people to place the entire blame for the energy crisis on environmental protection programs. I consider this evaluation to be in error.

Both energy and environmental goals can be achieved if there is commitment on the part of all affected parties. As duly elected representatives of the American people, Members of Congress enacted environmental protection laws designed to protect public health. These policies are now the law of the land.

In some instances, earlier established Federal and State compliance schedules now appear unduly optimistic. Nevertheless, the basic goals still are valid.

The provisions of the Energy Supply and Environmental Coordination Act of 1974 are in no way a retreat from the commitment of the Congress to put an end to environmental pollution and enhance the quality of our environment. Rather the legislation simply facilitates short-term and intermediate-term variances from some of the requirements of the Clean Air Act in order to accommodate the more recently adopted national objective to promote greater energy self-sufficiency through coal reconversion.

Therefore, for the reasons I have discussed today I urge enactment of H.R. 14368, the Energy Supply and Environmental Coordination Act of 1974.

Mr. President, I shall close in just 2 or 3 minutes.

I want to emphasize very strongly as my own opinion that the energy crisis may be temporarily set aside also. There may be an easing of the impact of this problem, but I can say that this problem is not over. Let us think for just a moment of the consequence of what is happening as a result of the increased price which American con-

sumers are paying for fuel—fuel of many types. It is a continuation of the energy problem when the price rises, let us say, 10 cents on the gallon, whether it is regular or high test gasoline. From the standpoint of the consumer, the increased price, the inflationary spiral, really skyrockets and is in effect a part of the energy problem, which is a continuing one, regardless of whether there is an embargo.

We do have to consider the conservation of fuel in this country at this time. Yesterday I endorsed and spoke for the continuance of the 55-mile-an-hour speed limitation. I am gratified that the Senate in its reasoned judgment kept the 55-mile-an-hour limit and did not act yesterday to increase the limit by 5 miles an hour.

We must not be complacent. We must not be apathetic. We must be very careful to assess the situation properly. I think that to do it properly we shall have to do what is in the legislation before us. These shortages and the real prospects of future problems will be our way of life. So the provisions before us now are a part of what I like to call an arsenal of techniques that must be accumulated to help the American people react responsibly not only to current conditions, but also to the potential supply situations which could become very, very acute in the coming months.

This measure must be passed so that we can meet, without delay, in conference with the House of Representatives. I believe that we can have a rather quick conference in bringing this matter through the conference process, and placing the legislation on the desk of the President, unimpaired, with the items that have been vetoed, I will say to the able chairman of our subcommittee, Mr. Muskie, by the President of the United States.

We have tried to bring to the Senate this barebones legislation to take care of automobile emissions and the reconversion to coal. I trust that we shall act affirmatively. We will, of course, be challenged to do the job that is necessary to be done. We must move ahead, and we must do so in a knowledgeable way, realizing that we have an opportunity—and the American people want us to embrace it—to act.

I thank my colleagues, especially the chairman of the subcommittee, Mr. Muskie, the ranking minority member of the subcommittee, Mr. Buckley, and the ranking minority member of the committee, Mr. Baker.

Mr. MUSKIE. Mr. President. I thank my good friend, the chairman of the Committee on Public Works, Mr. Randolph, for his statement and for his unfailing cooperation with the members of the committee, so as to reach agreement to move the legislation to the floor. What we have before us today is consistent with that pattern.

Mr. BAKER. Mr. President, the Public Works Committee amendment to H.R. 14368, the Energy Supply and Environmental Coordination Act of 1974, will grant significant new authority to the Environmental Protection Agency and the Federal Energy Administration. While the need for such authority is not as critical to the Nation's energy problems as it appeared last winter when we considered and passed similar legislation, which was later vetoed, it is still necessary and desirable.

The bill will give automobile manufacturers an added year and, if need be, 2 years, to solve any remaining problems which they may have with the new catalyst emission control systems that will be introduced

on the 1975 models. Setting a level of 2 grams per mile for emissions of nitrogen oxides in 1977 will give the manufacturers the incentive to develop and introduce cleaner engines with better fuel economy and drivability such as the stratified charge engine and diesel. **[Sec. 4, Sec. 202(b)(1)(B).]**

More important, the bill will encourage use of our plentiful supplies of domestic coal in preference to foreign oil. It will do this by authorizing the Federal Energy Administration to require that plants capable of burning coal do so and to order that new plants be designed to burn coal in addition to or instead of natural gas or petroleum products. **[Sec. 8, Sec. 2 ESECA.]** The Environmental Protection Agency will be authorized to grant short-term suspensions of clean air requirements with appropriate safeguards until June 1, 1975, or 1 year from enactment, whichever is earlier. EPA also will be permitted to allow plants which convert to coal to have until 1979, or in some cases 1980, to meet the primary, health-related standards in State implementation plans under the Clean Air Act. The action of the Public Works Committee on the coal conversion-related sections of the bill probably reduces the number of plants which may be converted in compliance with Clean Air Act requirements but makes it more certain that such conversions can be continued beyond July 1, 1975, by reducing the possibility that conversions will be tied up in administrative or judicial delays. **[Sec. 2, Sec. 119 CAA.]**

This is accomplished by changing the test which must be met before a plant can be converted from the House bill which requires that the source "will not materially contribute to a significant risk to public health" to a requirement that conversions be allowed where primary ambient air quality standards are not exceeded now and will not be exceeded as a result of the conversion. We understand that enough plants can be converted under this authority to spur significant new coal production at an orderly pace. Another problem in the House bill which the action of the committee has corrected is to remove the prohibition on enforcement of coal conversion orders after June 30, 1975. Therefore, coal conversions can continue in effect under FEA orders.

In order to permit FEA to order coal conversion where a plant has the capability of burning coal, the requirements in the House bill for a plant-by-plant environmental balancing and for prioritization of plants before any are ordered to convert have been removed as a result of our committee's action. This should also reduce the potential for administrative or judicial challenge to coal conversion orders.

The House bill would provide that those who voluntarily converted to the use of coal between September 15, 1973 and the date of enactment could continue to burn coal under certain conditions. In this context, "voluntary conversion" means having applied for a waiver from Clean Air Act requirements or having entered into a contract to purchase coal or having made a substantial investment in necessary plant equipment to burn coal. In many cases, these voluntary converters never in fact burned coal or did so only for several days. Therefore, in order to permit FEA to order those plants to convert where the potential for energy savings is greatest and to authorize EPA to keep air quality at a maximum, the Senate bill cuts down the period for voluntary conversion to the September 30 to December 15, 1973,

period which was contained in S. 2589, the vetoed energy emergency authorities bill.

Section 119, as added by **section 2** of the committee amendment, provides for treatment of sources which voluntarily converted to the use of coal during the period September 15 to December 15, 1973, or which are prohibiting by FEA order from burning petroleum products or natural gas and therefore must burn coal. It provides that those who convert to the use of coal may not be prohibited from burning coal and may receive an extension of clean air requirements to 1979, or in some cases 1980, where such a source "is located in an air quality control region in which applicable national primary ambient air quality standards are not being exceeded." As used here, the word "applicable" is intended to refer to those pollutants which are emitted from a powerplant, such as sulfur dioxide and particulates. This new section, of course, does not affect the other substantive provisions and procedures of the Clean Air Act and the implementation plans developed pursuant to it under which a source may choose to convert to coal so long as emission controls or conforming fuels insure compliance with emission limitations, implementation plans, and other requirements of the act by the applicable deadlines under the act.

The authority **section 8** grants to the Federal Energy Administratrator to require that new fossil fueled electric powerplants be designed and constructed to be able to burn coal instead of or in addition to other fossil fuels has been made discretionary in the committee amendment, rather than mandatory as in the House bill. Some of the factors which must be considered in FEA's determination include the anticipated impact of the new source performance standards and the requirements of State implementation plans which will apply to such plants under the Clean Air Act.

Many of the provisions of H.R. 14368 as passed by the House do not relate directly to the Clean Air Act or to the need to conserve energy resources. Therefore, as Senator Muskie indicated, the committee deleted **section 11** of the House bill on industry data reporting, **section 3(b),** transportation controls; **section 7,** energy conservation study; **section 8,** reports; and **section 9,** fuel economy study.

In view of the National Academy of Sciences clean air study we commissioned and our present hearings which will extend into June, a 1-year extension of Clean Air Act funding authorizations of fiscal year 1974 levels is included in the committee amendment.

Mr. President, the committee amendment probably does not satisfy anyone's wishes completely, but I believe it is a workable and productive compromise. It achieves the immediate adjustments in the Clean Air Act that are required while deferring any more fundamental readjustments that may be needed until after the comprehensive hearings in which we are now engaged.

I commend the distinguished chairman of our committee (Mr. Randolph) and the most able chairman (Mr. Muskie) and ranking minority member (Mr. Buckley) of the Environmental Pollution Subcommittee for this excellent legislation which they have worked so hard to produce, and I urge its prompt passage by the Senate.

Mr. Buckley. Mr. President, I want to express my appreciation as a member of the Public Works Committee for the leadership and

sense of purpose we have seen in the activities of the chairman of the committee, Senator Randolph, the chairman of the subcommittee, Senator Muskie, and the ranking minority member of the full committee, Senator Baker. We have seen responsible legislation and a responsible approach to an enormously important problem.

We have seen, in the atmosphere of the energy crisis, a rare application of intelligence and balance in meeting our energy needs in a responsible manner.

Members of the Public Works Committee and the Subcommittee on Environmental Pollution I believe have distinguished themselves in the manner in which they have approached this problem. We have in the substitute that was introduced by Senator Muskie a more precise attack on the problems that now face us, especially in light of the situation in which the automobile industry finds itself.

The substitute amendment, in other words, has discarded all those extraneous provisions in the House version that could be controversial and that could delay the attempt to provide that degree of certainty with respect to emission standards without which the automobile industry simply cannot proceed with its scheduled production.

So, in the first instance, we are keeping faith, although belatedly, with the largest employer in the United States.

In the second instance, we are doing it in a manner which will not compromise essential environmental goals.

The other aspect of the amendment is that it grants the necessary authority to EPA to suspend sulfur emission limitations where conversions to nonconforming fuels are required to meet energy needs during the period of the coming winter. **[Sec. 2, Sec. 119 CAA.]**

In other words, this authority is extended until July of 1975; but in providing the authority to suspend the sulfur emission standard beyond 1975 we do not in the process threaten health, as in every instance the language of the amendment makes clear that primary standards shall be met, that primary standards shall not be compromised where human health is at stake.

There are those who will say that the language of the amendment is too restrictive, in that it will not permit conversions from oil to coal in sufficient measure to alleviate the drain on oil in the event there should be a recurrence of an oil embargo.

I point out, Mr. President, that our coal-producing capacity is not such at this time as to permit a much larger conversion than is contemplated by the proposed legislation. In other words, we have not yet seen a stimulation of an expansion of coal-producing capacity sufficient for large-scale conversions from oil.

There is another feature of the amendment on which I would like to comment, and that is the encouragement it gives to the States to review the implementation plans that are to go into effect in July 1975. **[Sec. 3, Sec. 110(a)(3)(B) CAA.]**

Before the energy crisis came to national attention, before the prospect of shortages of petroleum was injected into the thinking of our planners, many States adopted plans that would move ahead of the statutory requirements and move toward the meeting of secondary standards. This is all well and good under normal circumstances; but in meeting secondary rather than health-related standards, many State plans would require a shift from coal to residual oil, which is that kind of oil in which we have our largest dependence on foreign sources. I

understand that at the present time we import approximately 90 percent of the residual fuels we consume on the east coast.

Thus, by encouraging the States to review their implementation plans, they can take into consideration the availability of scarce fuels and perhaps slow down the rate at which we advance toward our ultimate need to meet those secondary standards.

As I suggested earlier, Mr. President, in studying the proposed legislation, the Committee on Public Works decided to eliminate those portions of the House bill which were either controversial or which were extraneous to the essential task of finally establishing automobile exhaust standards for the coming production models and the flexibility required by the Administrator of EPA to grant variances. We have eliminated all those areas which could be controversial and which could delay action on this essential legislation.

Therefore, I hope that not only will the Senate adopt the substitute amendment, but also that Members of the Senate will restrain themselves in any efforts to "Christmas tree" this legislation, as it is far too important to the economy to invite delays. If this substitute is adopted, I believe there should be no difficulty in coming to a rapid agreement with the House conferees as to the nature of the legislation that can be enacted in short order for submission to the President.

Mr. JACKSON. Mr. President, I rise in support of amendment No. 1303, an amendment in the nature of a substitute of H.R. 14368, the Energy Supply and Environmental Coordination Act of 1974.

The amendment proposed by the Senate Public Works Committee to the House passed measure makes a number of changes which I believe will substantially improve the bill. While important amendments to the Clean Air Act have been retained and perfected, a number of provisions that are redundant with other legislation have been altered or omitted.

H.R. 14368 contains a number of provisions which were originally in S. 2589, the Energy Emergency Act, which was passed twice by the Senate and vetoed by the President on March 6.

After the Senate failed to override that veto, lengthy negotiations were held between the Congress and the administration to arrive at a substitute energy emergency measure more satisfactory to all parties. In the Senate, this measure was introduced as S. 3267. In the House, the identical provisions were divided into two bills: H.R. 13834 and the present bill H.R. 14368. The bills were moved separately by the House in the interest of expediency and this same procedure is now being followed in the Senate.

Mr. President, I commend both the House and the Senate Public Works Committee for their timely and responsible action in moving this urgently needed legislation.

GRANTS-IN-AID FOR STATE GOVERNMENT

Mr. President, it has become evident that the State governments have been carrying a considerable burden in conducting energy allocations and conservation programs. This has resulted in severe drains on their treasuries. For example, under section 5(b) of the Emergency Petroleum Allocation Act:

> The President may delegate all or any portion of the authority granted to him under this Act to such officers, departments, or agencies of the United States, or to any State (or officers thereof), as he deems appropriate.

The Allocation Act does not authorize grants-in-aid to State government to support the exercise of delegated authorities. During the recently ended embargo the performance of State and local government in meeting the challenge of energy shortages was excellent.

Although the embargo has ended, spot shortages continue and promise to worsen during the summer if energy conservation cannot be made a reality. For so long as this situation continues, the role of the States will continue to be most important. With this will continue the severe strain on State treasuries which has been imposed by the development and implementation of plans to complement and support those of the Federal Government.

In passing the Federal Energy Administration Act the Congress enacted a second statute which has the potential to make financial demands upon the States. For example section 5(a) of that act requires that the Administration shall "develop effective arrangements for the participation of State and local governments in the resolution of energy problems."

Section 7(d) states that:

> The Administrator may utilize, with their consent, the service, personnel, equipment, and facilities of Federal, State, regional, and local public agencies and instrumentation, with or without reimbursement therefor, and may transfer funds made available pursuant to this Act, to Federal, State, regional, and local public agencies and instrumentalities, as reimbursement for utilization of such services, personnel, equipment, and facilities.

Once again however, no provision is made for the appropriation of the funds which, in my view should be granted to the States in payment for that part of the nationwide burden that they have shouldered.

In enacting the Energy Emergency Act Congress provided for the needs of the States. Section 123 authorized funds for the Administrator of the Federal Energy Emergency Administration to make grants to States for the purposes of implementing authority delegated to them, or for the administration of appropriate State or local conservation measures where exempted from Federal conservation regulations under the act.

Section 127 authorized an appropriation to the Federal Energy Emergency Agency to carry out its functions and to make grants to States under **section 123**, of $75 million for each of the fiscal years 1974 and 1975. In addition for the purpose of making payments under grants to States to carry out energy conservation measures, $50 million was authorized to be appropriated for fiscal year 1974 and $75 million authorized to be appropriated for fiscal year 1975. Also, for the purpose of making payments to States for unemployment assistance, $500 million was authorized to be appropriated for fiscal year 1974.

This funding authority was anulled by the President in his veto of the emergency bill.

These same provisions are retained in S. 3267 which I am confident we shall soon pass. However, we are here concerned with ongoing programs, ones which have been in effect for over 5 months; ones that are making a vital contribution, ones which must continue.

As the FTC report notes, by the end of February 40 States were experiencing problems in their energy programs due to funding shortages. There is every indication that the situation has worsened. State budgets cannot stand the strain. We are confronted with a choice

between supporting proven, effective, in place programs and thus insuring their continuance and that of seeing them terminated. If we choose the latter, we are opting for control of local problems by a Washington bureaucracy. I do not believe such to be efficient, effective or desirable.

I had intended to call upon my colleagues to support an amendment, H.R. 14368, to insure the expeditious channeling of funds to where they may be most effectively expended. In the interest of expeditious action on this measure, however, I will not offer the amendment at this time, but will propose language in conference committee to provide grants-in-aid to State government.

ENERGY INFORMATION

Mr. JACKSON. Mr. President, H.R. 14368, as it passed the House, included several provisions dealing with the collection and dissemination of information by the Federal Energy Administrator.

These provisions were intended to supplement the authority conferred on the Administrator by the Federal Energy Administration Act of 1974. However, because the FEA Act was still being considered by Congress while H.R. 14368 was before the House, the energy information provisions of H.R. 14368 could not be properly meshed with the final language of the FEA Act.

In light of the fact that the FEA Act, including substantial energy information provisions, has now become law, enactment of much of the language on this subject in H.R. 14368 is no longer necessary. In fact, adoption of some of the provisions of H.R. 14368—such as those providing subpena powers—would only duplicate authority already conferred by the FEA Act.

There are, however, two provisions of H.R. 14368 relating to energy information which constitute substantive additions to the requirements of the FEA Act. One of these provisions requires the Administrator to prepare quarterly reports providing information on such subjects as imports, reserves, production, inventories, and refinery runs. The other makes clear that there is no legal barrier to access by Congress to the information collected or received by the Administrator.

Because the Public Works Committee did not include the House-passed energy information sections in its substitute, I had considered offering an amendment to the substitute to add these two significant provisions.

In the interest of early action on this measure I will not offer this amendment. The conferees on the bill will have full latitude and authority to insure that there is no duplication between **section 11** of the House-passed bill and the information provisions of the recently enacted Federal Energy Administration Act.

Mr. President, I ask unanimous consent that the text of both amendments be printed in the Record as a part of the legislative history on this measure.

The PRESIDING OFFICER. There being no objection, the amendments were ordered to be printed in the Record, as follows:

On page , line , insert the following: Add a new Section at the end of the bill as follows:

"GRANTS TO STATE GOVERNMENTS

"SEC. (a) There are authorized to be appropriated to the Administrator of the Federal Energy Administration for the purpose of making payments as grants to states, $30,000,000 for the fiscal year 1974 and $60,000,000 for the fiscal year 1975, such sums to remain available until expended.

"(b) Such grants to states shall be made for the exercise of those authorities delegated to any state (or officer thereof) under the Emergency Petroleum Allocation Act of 1973; for the fulfillment of any role which the Administrator delineates that state governments will perform in achieving the purposes of the Federal Energy Administration Act of 1974, or for the administration of state or local energy conservation programs."

Amendment to amend the Amendment in the Nature of a Substitute for H.R. 14368 by adding a new Section 10, as follows:

"Sec. 10—Energy Information Reports".

Section 15 of the Federal Energy Administration Act of 1974 is amended by adding at the end of subsection (e) a new subsection (f), as follows:

(f) In addition to other reports required by this Act, the Administrator shall prepare and publish for each calendar quarter beginning with the first complete calendar quarter following the date of enactment of this section a report containing such statistical and economic analysis, data, information, reports, and summaries of energy information obtained by him, which are necessary to keep the public fully and currently informed as to the nature, extent, and projected duration of shortages of energy supplies, the impact of such shortages, and the steps being taken to minimize such impacts, and such report shall include the following data:

(A) Imports of crude oil, residual fuel oil, refined petroleum products (by product), natural gas, and coal, identifying country of origin, arrival point, quantity received, and, where practicable, the geographic distribution within the United States. (B) Domestic reserves and production of crude oil, natural gas, and coal.

(C) Refinery activities, showing for each refinery within the United States (i) the amounts of crude oil run by such refinery, (ii) amounts of crude oil allocated to such refinery pursuant to regulations and orders of the Federal Energy Administrator or of any other person authorized to issue regulations and orders with respect to the allocation of crude oil, (iii) percentage of refinery capacity utilized, and (iv) products refined from such crude oil.

(D) Inventories on a national, regional, and State-by-State basis, of refined petroleum products by product.

(E) Production of refined petroleum products by product during the preceding calendar quarter preceding such report, anticipated production of refined petroleum products by product during the succeeding calendar quarter following such report, and any anticipated excess or shortfall of refined petroleum products by product during such succeeding calendar quarter."

Section 14 of the Federal Energy Administration Act of 1974 is amended by adding at the end of subsection (c) a new subsection (d), as follows:

"(d) Notwithstanding any other provisions of law, energy information collected and received by the Administrator may be disclosed to the Congress, or any Committee of Congress, upon request of the Chairman."

Mr. MCCLURE. Mr. President, one question has been raised which I think demands a little more analysis than has been given it. I do not intend at this time to do any more than raise the question and point to the fact that there may ultimately be further legislative debate and perhaps legislative resolution of a problem which was first raised by the Senator from Maine (Mr. Muskie) as he dealt with the question of environmental impact statement requirements by the Administrator of the Environmental Protection Agency. **[Sec. 6(c), Sec. 7(c)(2) ESECA.]**

Senator Muskie says that the legislative history is abundantly clear that this is present law. It well may be that the courts would find that to be true, or it may well be that the courts might disagree with that

finding. If the latter be the case, this is not a restatement of the law but a creation of statute.

Rather than simply pass it by at this time without comment, I think some question should be raised as to whether or not the Environmental Protection Agency in every instance should operate outside the law which applies to all other Federal agencies, requiring them to file an impact statement. The National Environmental Policy Act very definitely has a careful balance written into the statute requiring several different factors to be considered in any Federal decision, and the impact statement that is required of other Federal agencies requires a balancing of those factors in the statement and discussion of that balance in the promulgation of the statement.

The Senator from Maine is quite correct that there are times when decisions required of the Administrator by the statute are not sufficiently long to give him the opportunity to develop an environmental impact statement within the time frame required by the statutes. It is very true. It is equally true of all other administrative agencies which must meet the requirements of the impact statement law. It is also suggested that it would subject the Administrator's decisions to prolonged litigation, and this is possibly true. That is equally true of other administrative agencies.

While I do not intend at this time to attempt to change the language that has been inserted in this measure, because I think it needs a more thoughtful and lengthy discussion than we would give it today, I do think the question ultimately will have to be resolved by Congress, after a full debate of the extent to which the Administrator of the Environmental Protection Agency should be exempted from a law which applies to every other Federal Administrator but, under this language, not to him.

I believe that the balancing of public discussion that is required in the development of the impact statement in many, if not most—if not all—of the Administrator's decisions would be in the public interest, even though it might at times make it more difficult for the Administrator to arrive at a decision.

I take this time—and I thank the Senator from New York for yielding this time to me—only to raise the issue as a subject for continuing discussion and perhaps ultimate resolution; because I believe a serious fundamental question which has been raised, which ought to have a full discussion and final decision by Congress.

Mr. Muskie. I understand that we have been making a record on this question.

Let me make the point, as the originator of the environmental impact statement, as the author of it, as the prime force in having the requirement to prepare an environmental impact statement included in the National Environmental Policy Act, as to what its intention was.

It was our intention to inject into the decisionmaking of mission-oriented agencies environmental values that were not previously taken into account. In the discussion of this proposal—which I repeat was mine—we developed phraseology to distinguish between two categories of agencies: We referred to the agencies to be covered as environmental impact agencies and the agencies to be excluded as environmental protection agencies; the courts understood that.

For example, in International Harvester against Ruckelshaus, which was decided in the District of Columbia Circuit, on February 10, 1973, the court said this and it captures the essence of the legislative intent right on the nose:

> Although we do not reach the question whether EPA is automatically and completely exempt from NEPA, we see little need in requiring a NEPA statement from an agency whose raison d'etre is the protection of the environment and whose decision on suspension is necessarily infused with the environmental considerations so pertinent to Congress in designing the statutory framework. To require a "statement" in addition to a decision setting forth the same consideration, would be a legalism carried to the extreme.

I would like to be able to persuade the distinguished Senator from Idaho and the distinguished Senator from New York to my point of view, but I make the limited point on which I hope the Senators would agree. That point is that the environmental laws written since NEPA was written were developed on the basis of an assumption that NEPA did not apply. Thus, we wrote into the laws many specific regulatory requirements and deadlines that did not take into account the potential delay that would be cranked in by a NEPA application or values that might be cranked in that were not reflected in the standard setting procedures of the environmental law.

If we want to undo and crank in NEPA, what we would need is a thorough committee review in both Houses as to the impact, in specific detail, on environmental laws.

When one looks at the list of current and future rulemaking actions possibly affected I think the point is clear.

Mr. President, I ask unanimous consent to have printed in the Record a list of current and future rulemaking actions possibly affected by this decision.

There being no objection, the list was ordered to be printed in the Record, as follows:

CURRENT AND FUTURE RULEMAKING ACTIONS POSSIBLY AFFECTED BY EIS PROVISION

AIR

1. SIP variances from fuel/sulfur regulations.
2. SIP revisions to implement Clean Fuels Policy.
3. Transportation control plans.
4. Complex source review regulations.
5. New source performance standards:

Group II: Asphalt plants, petroleum refineries, petroleum storage tanks, iron and steel (basic oxygen furnaces), sewage sludge incinerators, brass and bronze, and secondary lead smelters.

Group IIA: Primary copper, lead, and zinc smelters.

Group III: Aluminum reduction, ferro-alloy plants, kraft pulp mills, iron and steel (electric furnaces), phosphate fertilizer plants, and stationary gas turbines.

6. Lead additive regulations (to limit lead content of leaded grades).
7. Approval of SIPs to implement secondary standards for particulate matter.
8. Supplementary control systems regulations.
9. Regulations to prevent significant deterioration.

Mr. MUSKIE. I will not give a complete recital of the list at this time, but I have placed it in the Record for the perusal of Senators.

Mr. MCCLURE. Mr. President, will the Senator yield further?

Mr. BUCKLEY. I yield.

Mr. MCCLURE. The thing that concerns me is whether or not the balance that is written into the National Environmental Policy Act is also a balance which is always followed at EPA in their decisions.

Mr. MUSKIE. Mr. President, if the Senator will yield, on one point clearly it is not and that is the underlying basis of the Clean Air Act. We said in the Clean Air Act that health and health alone shall dictate the primary air quality standards; that neither economic nor technological considerations should compromise those standards. How rapidly that should be achieved is a compromisable issue, but on the standards the entire Congress said that the health basis shall be the only basis. If NEPA applies, presumably that basis could be followed.

Mr. MCCLURE. I did not raise the point of whether NEPA had a balancing requirement with respect to the Clean Air Act, but under other acts——

Mr. MUSKIE. I just said with respect to the clean air standards Congress itself did not compromise health considerations by economic or technological considerations, and that was clear. Nobody was fooled by it; that was clear.

Mr. MCCLURE. I do not argue that point with the Senator from Maine. I think that is obvious.

Mr. MUSKIE. That is the heart of my point.

Mr. MCCLURE. The question is whether or not the Environmental Protection Agency should be exempted from filing impact statements in the broad range of the subjects and not just the Clean Air Act.

Mr. MUSKIE. The question is the same. NEPA was designed to insure that mission-oriented decisions like those of the Atomic Energy Commission must take into account environmental considerations. NEPA was not designed in the view of one of its authors, namely, me, to enable the Atomic Energy Commission to compromise environmental standards set by the Environmental Protection Agency. It is that simple. If Congress decides that the Atomic Energy Commission, or the Corps of Engineers, or other mission-oriented agencies should have the right and power to compromise environmental values, that certainly is the prerogative of Congress.

What I object to is to see that result achieved through the back door and nonlegislative means.

Mr. MCCLURE. Let us make a distinction here, and it needs to be made because apparently I have not made myself understood. I do not quarrel with the fact that Congress has set standards in the Air Quality Act. There is no question about that. The question I have is the implication of a statement or a policy that the Environmental Protection Agency does not have to balance factors where they are mandated by Congress, because the National Environmental Policy Act said they must be balanced.

Mr. MUSKIE That question depends on whether NEPA applies to EPA, and on that the Senator and I disagree.

Mr. MCCLURE. That is the point I am trying to make: Not the air quality standards set by Congress, but the balancing requirements of the National Environmental Policy Act which many people feel are not being adequately carried out by the decisions of the Environmental Protection Agency.

The question does not come at this time whether the goals of the Air Quality Act should be compromised. The question is: Absent those goals and standards mandated by Congress, the Environmental Protection Agency should reach a balanced judgment.

Mr. MUSKIE. That is my point. What is the Senator going to balance the health standards against? The Senator is talking about balancing as though those values would be balanced against some unknown.

The people who want to achieve this balancing judgment by imposing NEPA on EPA want to compromise those environmental values by forcing the agency to take into account values Congress has already taken into account and decided in favor of the environmental values.

What is the purpose of the balancing exercise in the name of health standards? What is the purpose? Is it to protect them?

Mr. MCCLURE. I would say that the Senator is focused on the Air Quality Act.

Mr. MUSKIE. It is as good an illustration as any of what I am talking about.

Mr. MCCLURE. It is not because Congress set those standards in that instance. It said, "Do not balance it; apply these standards." But Congress did not in every environmental field say, "Ignore balance." It specifically said to apply balance except where Congress specifically provided otherwise, as we did in the Air Quality Act.

The development of the environmental impact statement is the guarantee of public input and discussion that will bring about the balance Congress required in the Environmental Policy Act.

Mr. MUSKIE. It really is not quite that simple. First, this amendment applies only to the Clean Air Act.

Mr. MCCLURE. That is correct.

Mr. MUSKIE. Second, with respect to the Clean Water Act Congress legislated a clarification of the application of NEPA to the Clean Water Act and the intent is that the regulatory functions of NEPA with regard to water pollution are not covered by NEPA.

With respect to air, the health basis is simply the underlying philosophy, but it is translated across the board—with respect to the automobile stationary forces, implementation plans of the States—and in each case addition of the balancing judgment required by NEPA means other agencies not concerned with the environment should have the opportunity to dilute the philosophy of the Clean Air Act, as reflected in the standards set under that act. I tried to use a simple illustration, which I think is pertinent, but I am happy to get into the more complex standard-setting procedures of EPA; but they are the same as what the courts have held insofar as the courts have spoken on it.

Mr. MCCLURE. Either the Senator misses my point or he does not want to debate my point.

Mr. MUSKIE. I see the Senator's point. The Senator does not see my explanation.

Mr. MCCLURE. The Senator's explanation is tied to the Clean Air Act.

Mr. MUSKIE. Yes.

Mr. MCCLURE. Would the Senator permit me to make my statement? I would appreciate that. I thank him for his courtesy.

The question is not involved with the standards set under the Clean Air Act, because the Congress has mandated them, and I know the amendment we are dealing with here today should deal only with the Clean Air Act. That is why I am not attempting to go into any change in the amendment that is adopted in the bill. But the statement of the

Senator from Maine goes far beyond this amendment and he has said that the Environmental Protection Agency should be exempted from the balancing that is required of all other agencies, and I am saying that the Environmental Policy Act requires that balancing. We start off with a fundamental disagreement or misunderstanding, perhaps, of what the environment is.

We debated this in the Interior and Insular Affairs Committee, of which the Senator from New York and I are both members, for hours on end in trying to adopt a definition of the term "environment," because there are people who have a narrow definition of the term "environment" that excludes all economic, social, and political considerations that go into the entire environment of a person in this country. One cannot ignore part of it without in some way damaging the environment in which people live.

What good does it do for us to have clean air and clean water for people who are starving to death or freezing? There is a balancing that is required in some of these decisions, and what I am suggesting is that Congress recognize that at the time the National Environmental Policy Act was adopted, it inserted into the Environmental Policy Act the consideration of factors broad enough, much broader, I believe, than some people have suggested that the term "environment" embraces.

There are those who believe, apparently, that the only thing in the environment that is worth protecting is what God put in it. I would suggest that there are many things that man put in it that are worthy of protection as well. Man has made it possible for men and women to live better than animals and make them less subject to the forces of nature, and those things are worth while and they are worth protecting, and the National Environment Policy Act recognizes that from that necessity. I do not think the Environmental Protection Agency should be exempted from the principle that applies to every other agency, to determine whether or not they have made a proper evaluation of the tradeoffs, that are required in these decisions.

Again, I would say I know this amendment in the bill applies only so far as the Clean Air Act is concerned. **[Sec. 6(c), Sec. 7(c)(2) ESECA.]** I take this time only so that I do not want this discussion to assume that I accept this rationale as being applicable to every decision made by the Environmental Protection Agency, because I believe we are running into a great deal of trouble because of that very narrow, limited interpretation of the word "environment," and the very narrow and limited interpretation of the responsibility of the Environmental Protection Agency.

I think it is an important fact which the Congress must sometime at least confront—that the Environmental Protection Agency is not God Almighty, that the Environmental Protection Agency has at times put blinders on in ignoring some of the factors which Congress directed it should consider, and I think the environmental impact statement should be directed toward those broad considerations in a manner which would not interfere with the ability to make decisions by the Environmental Protection Agency which would in the long run best be served by that policy, and certainly as the public, the people of the country who live here in this total environment, would best be served by that interpretation of the Act.

I am quite sure, despite statements that have been made that court decisions always find the other way, there are court decisions that have found that the Environmental Protection Agency must make that balanced finding and that the decisions that the Environmental Protection Agency makes are sometimes indeed major Federal decisions which require an impact statement as required by the NEPA act itself.

I thank the Senator again for yielding this time.

Mr. BUCKLEY. Mr. President, I think the colloquy we have just listened to is an enormously useful one. I think it touches a subject that must be studied at great length at an appropriate time.

I must confess that I do not share the distinguished Senator from Maine's apprehensions as to the effect of the House Appropriations Committee action. As I read that statute, it does not in any degree change existing law, though; to the extent that NEPA impacts on EPA, there has been no change whatever; therefore, curative amendments are not required. But I do believe the NEPA procedure requires a checklist, as it were, that is enormously useful, and it is one that I believe from time to time the EPA could have availed itself of with great benefit to all concerned.

But I do agree that what we are discussing here affects only the Clean Air Act, and I do hope that at some later time we might have a change, in a review of the NEPA legislation, to have the opportunity to explore further whether or not environmental needs, broadly defined, would not be better served by bringing EPA under the overall umbrella of requiring impact statements.

Mr. MUSKIE. I would like to make the point which I made in my opening statement, that adoption of this amendment would not prohibit Mr. Train from filing "voluntary" statements which he has announced he will file, but it would prohibit the imposition of mandatory requirements which would have the effect, conceivably, of upsetting statutory EPA procedures.

So, as I understand what the Senator is saying, it seems to me this amendment is consistent with his view of what ought to be done if Mr. Train follows through on the "voluntary" statements.

Mr. BUCKLEY. I thank the Senator from Maine for that clarification. He does, of course, state the intent of his amendment—that it does not preclude voluntary compliance.

I would say that one thing I am a little concerned about with reference to the Senator from Maine's statement: namely, that it was not the intention of the environmental policy legislation to affect environmental protection agencies, and I say that because I believe the debate at the time named the National Park Service as an environmental agency.

Mr. MUSKIE. No. What we had in mind, may I say to the Senator—and I appreciate this opportunity to clarify that—was those environmental protection agencies with regulatory authority, without spelling out the authority in the statute. We wanted to exclude agencies whose legislators responsibility could be offset by that legislation. It is in that limited sense, not in the overall sense, including the Park Service, the Forest Service, and all the rest, that we used the term environmental protection activities.

Mr. McCLURE. Mr. President, will the Senator yield just briefly, because I think it would be instructive if we included in the Record at this point, so that people reading the Record might have it forthwith, without having to go outside the Record to determine what it is I am trying to say, the applicable part of the statute?

The National Environmental Policy Act in title I, section 101, includes in its first subsection the following language:

> To use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

I think it is useful to have that language from the Environmental Policy Act included in this act.

Mr. President, I thank the distinguished Senator from Maine for yielding.

Mr. MUSKIE. Mr. President, I subscribe fully to that philosophy. I did so at the time I offered the environmental impact statement amendment to the act.

Mr. MATHIAS. Mr. President, I call up my amendment which is at the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. MATHIAS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> On page 17, after line 2, add a new paragraph (c).
> "(C) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plans including a parking surcharge regulation."

Mr. MATHIAS. Mr. President, I asked that the clerk not read the amendment further because the language is very simple. It eliminates a surcharge on downtown parking. **[Sec. 110(b)(2)(B) CAA.]**

The language is similar to that of the bill as passed by the House of Representatives. It is a part of the bill which has already been passed in the other body. It is language with which we are familiar because the Senate adopted similar language. I feel that it is necessary language, not because I have any lack of concern over the congestion in downtown Washington, which brings about many problems, including the problem of air quality and environmental problems of many sorts. My concern is that because it is a complex problem, a problem with social overtones, a problem with economic overtones, it goes to the heart of every urban concern we have.

This is not a decision which should be made by any single agency. It is a problem of a complex nature. Many countries in the world have attacked the problem of downtown traffic in a variety of ways. I think we ought to have before us some of the alternatives, some of the sev-

eral different kinds of solutions, and not merely be restricted to a single, rather dull, blunt economic club which can be waved over the heads of those who have to commute into urban areas in order to earn a living. We ought to have a full variety of solutions available before we make the decision. I should like to see an economic surcharge provision included in the pending bill as it is included in the House bill.

Mr. MUSKIE. Mr. President, I fully understand the Senator's concern and his point of view.

This provision, which was included in the earlier conference report on this general subject, is not included in the Senate bill at this point because the Senate committee has never held hearings on this subject. The House committee has. It included the provision in the legislation last December and insisted upon it vigorously in conference. We accepted it at that point for the purpose of that legislation.

Mr. MATHIAS. Mr. President, I think the fact that we have not had hearings in the Senate is all the more reason to withhold this particular power at this time.

Mr. MUSKIE. I understand the Senator's point. The other reason why we did not include the provision in the bill at this time is that we thought that in the emergency, favorable terms have appeared during the past few months, and we ought at least to discuss this issue again in conference.

We would not have a meaningful discussion if the issue were not in conference, and we fully expect to have a discussion. We fully expect that the House will be vigorous in its presentation of its point of view. We are conscious of the fact that the Senator from Maryland and others share that point of view. We will fully take that matter into account as we get into the conference.

Mr. MATHIAS. Mr. President, I am reassured by the opinion or view just expressed by the distinguished Senator from Maine. I want to be assured, however, that there is a body of opinion in the Senate which questions whether or not that particular power should be delegated at the expense of those who have to earn their living by driving into metropolitan areas all over the country. We believe that the variety of other solutions should be examined very carefully before we take action.

Mr. MUSKIE. Mr. President, I may say further that it was the purpose of the earlier conference agreement in that the parking surcharge provision should be set aside so that we could have hearings this year. The Senate committee fully expects to have hearings sometime this year on this issue.

Mr. MATHIAS. Mr. President, with that assurance, on which I know I can rely, and know that all Senators can rely, that this problem will get some sympathetic consideration from the conferees, I will not insist on a vote on this amendment at this time.

Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The question is on agreeing to the amendment offered by the Senator from Maine.

The amendment was agreed to.

The question is on the third reading and passage of the bill.

Mr. MCCLURE. Mr. President, I know that we are fighting a time constraint under the previous unanimous-consent agreement. However, I

think that there is a potential conflict, or a bit of a conflict, between two of the acts we are dealing with. That conflict comes up because of the change that we have made in the coal conversion sections of the bill that did not exist under the previous sections of the bill, when we had agreed that the Federal Administrator could mandate coal conversion.

We can now under this arrangement only suggest it and stimulate it. However, if the State or local regulations are more stringent, we can suggest to them that they change those restrictions, but we cannot mandate them. The result could be that under a strict State statute, some State standards may require the use of low sulfur fuel beyond that necessary to meet primary or secondary standards under the act.

It might be felt that the Federal Administrator must allocate the low sulfur fuel and leave the rest of the country to buy whatever higher sulfur fuel might exist.

There is a section in this act that we are now considering which seeks to say that that result would not necessarily occur, and that whatever changes are necessary in the administration of the Mandatory Allocation Act would occur because of the amendment to this act.

Mr. MUSKIE. The Senator is correct. The Senator raised this point in the executive meeting of the Public Works Committee yesterday, and I think it has been resolved in **section 6(a)**, which reads:

> Any allocation program provided for in **section** 8 of this Act or in the Emergency Petroleum Allocation Act of 1973 shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the country designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

To give this meaning in my own words, it is the intent of this provision to insure that clean fuels and conforming fuels are used, with the highest priority given to protecting primary ambient air standards, which are the health protection standards, and that beyond that, fuel should be distributed in accordance with the general authority of the administrator.

Mr. MCCLURE. So that it could not, then, result in violation of primary ambient air standards in one area of the country in order to comply with stricter standards in some other State or local area?

Mr. MUSKIE. The Senator is correct.

Mr. RANDOLPH. I wish to reaffirm what the able Senator from Maine (Mr. Muskie) has stated. The Senator from Idaho (Mr. McClure) addressed this subject in a very knowledgeable manner within the committee's executive session on this legislation. I appreciate, as I am sure all of us do within the committee, the opportunity to clarify this point as it has been done by Senator Muskie.

As I noted, I wish to reaffirm what Senator Muskie has said.

I think it is important and necessary to clarify situations of this type. I again commend the Senator from Idaho for bringing this matter to our attention, so that it could be handled and clarified in this manner.

Mr. MCCLURE. I thank both Senators for their information. That is certainly in accord with my understanding.

Mr. President, during consideration of the bill before us, I believe that it is important that we keep in mind another bill—considered and passed last year—the Emergency Petroleum Allocation Act. When

Congress passed that measure, we granted the President of the United States the authority to take fuel from one State, and give it to another. Not only did we grant that authority, we directed him to exercise it.

The changes in the Clean Air Act being considered today are directly related to that allocation authority granted last year. And, one of the key issues involved is the setting of sulfur standards by local or State governments which are far stricter than those required by Federal law. Are we, in effect, to reward cities and States which set unreasonable standards for the sulfur content of fuels, and penalize regions which have not? Are we to see continued use of home heating oil by utilities and industries, who could use coal or residual fuel oil? I believe that it is essential that local and State governments recognize their responsibility to set reasonable standards for fuel composition, and not bow to political pressures with the hope that the Federal Government will bail them out, at the expense of their neighbors.

Obviously, it would be politically advantageous for any locality to demand almost zero sulfur content for any fuel burned within its boundaries, if they could be certain that they would receive adequate fuel supplies at their neighbor's expense. I believe the Congress should be firmly on record as opposed to such actions. During these times of continuing fuel shortages and continuing concern for clean air, every State, county, and city has an obligation to carry its share of the burden, and not to expect to burn all natural gas or home heating oil, while others burn 3 percent sulfur coal.

I am pleased to join with my colleagues on the Public Works Committee in introducing this proposed legislation. It does not represent—as some have charged—a "gutting" of the Clean Air Act—nor does it represent an ideal solution to the critical energy problems facing this country.

The Presiding Officer. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

[The amendments were ordered to be engrossed and the bill to be read a third time.]

[The bill (H.R. 14368) was read the third time.]

Mr. Buckley. Mr. President, I yield 1 minute to the Senator from Tennessee.

Mr. Baker. Mr. President, I rise only to make a statement with regard to my personal relationship to this measure. As the senior Republican on the committee, it has been my duty to follow the development of the automobile emissions section and the coal conversion section of the bill.

It is the responsibility of each Member of the Senate, of course, to determine whether or not he has a conflict of interest. It is my judgment that I do not. But so the record will be entirely complete, and everyone will understand what the situation is, I would point out to my colleagues that I am the owner of a partnership interest in a substantial tract of land in Tennessee which I purchased from my father's estate, on which there are known coal reserves and known oil and gas reserves. I am not involved in production of either oil and gas or coal, but lest I be misunderstood, I wanted to make that statement.

The PRESIDING OFFICER. The bill having been read the third time, the question is: Shall it pass?

[The bill (H.R. 14368) was passed.]

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GRIFFIN. I move to lay that motion on the table.

[The motion to lay on the table was agreed to.]

Mr. MUSKIE. Mr. President, I move that the Senate insist on its amendments to H.R. 14368 and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

[The motion was agreed to; and the Presiding Officer appointed Mr. Randolph, Mr. Muskie, Mr. Montoya, Mr. Jackson, Mr. Bible, Mr. Baker, Mr. Buckley, and Mr. Fannin conferees on the part of the Senate.]

CHAPTER 4

S. 3267 and H.R. 13834, Introduction and Reports

93D CONGRESS
2D SESSION

S. 3267

IN THE SENATE OF THE UNITED STATES

MARCH 28, 1974

Mr. JACKSON (for himself, Mr. MAGNUSON, Mr. METZENBAUM, Mr. MUSKIE, and Mr. RANDOLPH) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To provide standby emergency authority to assure that the essential energy needs of the United States are met, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, including the following table of contents, may be cited as the "Standby Energy Emergency Authorities Act".

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TITLE III—STUDIES AND REPORTS

TITLE I—STANDBY ENERGY EMERGENCY AUTHORITIES

SEC. 101. FINDINGS AND PURPOSES.

(a) The Congress hereby determines that—

(1) current energy shortages have the potential to create severe economic dislocations and hardships;

(2) such shortages and dislocations could jeopardize the normal flow of interstate and foreign commerce;

(3) disruptions in the availability of imported energy supplies, particularly petroleum products, pose a serious risk to national security, economic well-being, and health and welfare of the American people;

(4) because of the diversity of conditions, climate, and available fuel mix in different areas of the Nation, governmental responsibility for developing and enforcing energy emergency authorities lies not only with the Federal Government, but with the States and with the local governments;

(5) the protection and fostering of competition and the prevention of anticompetitive practices and effects are vital during periods of energy shortages.

(b) The purposes of this Act are to grant specific temporary standby authority to impose end-use rationing and to reduce demand by regulating public and private consumption of energy, subject to congressional review and

right of approval or disapproval, and to authorize certain other specific temporary emergency actions to be exercised, to assure that the essential needs of the United States for fuels will be met in a manner which, to the fullest extent practicable: (1) is consistent with existing national commitments to protect and improve the environment; (2) minimizes any adverse impact on employment; (3) provides for equitable treatment of all sectors of the economy; (4) maintains vital services necessary to health, safety, and public welfare; and (5) insures against anticompetitive practices and effects and preserves, enhances and facilitates competition in the development, production, transportation, distribution, and marketing of energy resources.

SEC. 102. DEFINITIONS.

For purposes of this Act:

(1) The term "State" means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

(2) The term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (as defined in the Emergency Petroleum Allocation Act of 1973).

(3) The term "United States" when used in the geographical sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(4) The term "Administrator" means the Administrator of the Federal Energy Administration established by H.R. 11793, Ninety-third Congress (popularly known as the Federal Energy Administration Act of 1974) if H.R. 11793 is enacted; except that until such Administrator takes office, such term means any officer of the United States designated by the President.

SEC. 103. END-USE RATIONING.

Section 4 of the Emergency Petroleum Allocation Act of 1973 is amended by adding at the end thereof the following new subsection:

"(h) (1) The President may promulgate a rule which shall be deemed a part of the regulation under subsection (a) and which shall provide, consistent with the objectives of subsection (b), for the establishment of a program for the rationing and ordering of priorities among classes of end-users of crude oil, residual fuel oil, or any refined petroleum product, and for the assignment to end-users of such products of rights, and evidences of such rights, entitling them to obtain such products in precedence to other classes of end-users not similarly entitled.

"(2) The rule under paragraph (1) of this subsection shall take effect only if the President finds that, without such rule, all other practicable and authorized methods to limit energy demand will not achieve the objectives of subsection

(b) of this section and of the Standby Energy Emergency Authorities Act.

"(3) The President shall, by order, in furtherance of the rule authorized pursuant to paragraph (1) of this subsection and consistent with the attainment of the objectives in subsection (b) of this section, cause such adjustments in the allocations made pursuant to the regulation under subsection (a) as may be necessary to carry out the purposes of this subsection.

"(4) The President shall provide for procedures by which any end-user of crude oil, residual fuel oil or refined petroleum products for which priorities and entitlements are established under paragraph (1) of this subsection may petition for review and reclassification or modification of any determination made under such paragraph with respect to his rationing priority or entitlement. Such procedures may include procedures with respect to such local boards as may be authorized to carry out functions under this subsection pursuant to section 120 of the Standby Energy Emergency Authorities Act.

"(5) No rule or order under this section may impose any tax or user fee, or provide for a credit or deduction in computing any tax.

"(6) At such time as he finds that it is necessary to put a rule under paragraph (1) of this subsection into effect, the

President shall transmit such rule to each House of Congress and such rule shall take effect in the same manner as an energy conservation plan prescribed under section 104 of the Standby Energy Emergency Authorities Act and shall be deemed an energy conservation plan for purposes of section 104(c), notwithstanding the provisions of section 104 (a) (1) (B). Such a rule may be amended as provided in section 104(a) (4) of such Act."

SEC. 104. ENERGY CONSERVATION PLANS.

(a) (1) (A) Pursuant to the provisions of this section, the Administrator may promulgate, by regulation, one or more energy conservation plans in accord with this section which shall be designed (together with actions taken and proposed to be taken under other authority of this or other Acts) to result in a reduction of energy consumption to a level which can be supplied by available energy resources. For purposes of this section, the term "energy conservation plan" means a plan for transportation controls (including but not limited to highway speed limits) or such other reasonable restrictions on the public or private use of energy (including limitations on energy consumption of businesses) which are necessary to reduce energy consumption.

(B) No energy conservation plan may impose rationing or any tax or user fee, or provide for a credit or deduction in computing any tax.

(2) An energy conservation plan shall become effective as provided in subsection (b). Such a plan shall apply in each State, except as otherwise provided in an exemption granted pursuant to such plan in cases where a comparable State or local program is in effect, or where the Administrator finds special circumstances exist.

(3) An energy conservation plan may not deal with more than one logically consistent subject matter.

(4) An amendment to an energy conservation plan, unless the Administrator determines such an amendment does not have significant substantive effect, shall be transmitted to Congress and shall be effective only in accordance with subsection (b), except that such an amendment may take effect immediately or on a date stated in such an amendment if the Administrator determines that a delay of 15 calendar days of continuous session of the Congress after the date on which such an amendment is transmitted to the Congress would seriously impair the operation of the plan or be inconsistent with the purposes of this Act, but if either House of the Congress, before the end of the first period of 15 calendar days of continuous session after the date of submission of such an amendment, passes a resolution stating in substance that such House does not favor such an amendment, such amendment shall cease to be effective on the date of passage of such resolution. Any amendment which the

Administrator determines does not have significant substantive effect and any rescission of a plan may be made effective in accordance with section 553 of title 5, United States Code.

(5) Subject to subsection (b) (3), an energy conservation plan shall remain in effect for a period specified in the plan unless earlier rescinded by the Administrator, but shall terminate in any event no later than 6 months after such plan first takes effect or June 30, 1975, whichever first occurs.

(b) (1) For purposes of this subsection, the term "energy conservation plan" includes an amendment to an energy conservation plan which has significant substantive effect.

(2) The Administrator shall transmit any energy conservation plan (bearing an identification number) to each House of Congress on the date on which it is promulgated.

(3) (A) Except as provided in subparagraph (B), if an energy conservation plan is transmitted to the Congress such plan shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which such plan is transmitted to it unless, between the date of transmittal and the end of the 15-day period, either House passes a resolution stating in substance that such House does not favor such plan.

(ii) An energy conservation plan described in subparagraph (A) may be implemented prior to the expiration of

the 15-calendar-day period after the date on which such plan is transmitted, if each House of Congress approves a resolution affirmatively stating in substance that such House does not object to the implementation of such plan.

(4) For the purpose of paragraph (3) of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 15-day period.

(5) Under provisions contained in an energy conservation plan, a provision of the plan may take effect at a time later than the date on which such plan otherwise takes effect.

(c) (1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right

of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(2) For purposes of this subsection, the term "resolution" means only a resolution of either House of Congress described in subparagraph (A) or (B).

(A) A resolution the matter after the resolving clause of which is as follows: "That the ———— does not object to the implementation of energy conservation plan numbered ———— submitted to the Congress on ————, 19 .", the first blank space therein being filled with the name of the resolving House and the other blank space being appropriately filled; but does not include a resolution which specified more than one energy conservation plan.

(B) A resolution the matter after the resolving clause of which is as follows: "That the ———— does not favor the energy conservation plan numbered ———— transmitted to Congress on ————, 19 .", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one energy conservation plan.

(3) A resolution once introduced with respect to an energy conservation plan shall immediately be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(B) If the committee to which a resolution with respect to an energy conservation plan has been referred has not reported it at the end of 5 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such energy conservation plan which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same energy conservation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or dis-

agreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same plan.

(5) (A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which the resolution was agreed to or disagreed to; except that it shall be in order to substitute a resolution disapproving a plan for a resolution not to object to such plan, or a resolution not to object to a plan for a resolution disapproving such plan.

(6) (A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolu-

tion and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to an energy conservation plan, then it shall not be in order to consider in that House any other resolution with respect to the same plan.

(d) (1) Any energy conservation plan or rationing rule, which the Administrator submits to the Congress pursuant to subsection (b) of this section shall state any findings of fact on which the action is based, and shall contain a specific statement explaining the rationale for such plan or rule.

(2) To the greatest extent practicable, any energy conservation plan or rationing rule which the Administrator submits to the Congress pursuant to subsection (b) of this section shall also be accompanied by an evaluation prepared by the Administrator of the potential economic impacts, if any, of the proposed plan or rule. Such evaluation shall include an analysis of the effect, if any, of such plan or rule on—

(A) the fiscal integrity of State and local government;

(B) vital industrial sectors of the economy;

(C) employment, by industrial and trade sector, as well as on a national, regional, State, and local basis;

(D) the economic vitality of regional, State, and local areas;

(E) the availability and price of consumer goods and services;

(F) the gross national product;

(G) competition in all sectors of industry;

(H) small business; and

(I) the supply and availability of energy resources for use as fuel or as feedstock for industry.

SEC. 105. COAL CONVERSION AND ALLOCATION.

(a) The Administrator shall, to the extent practicable and consistent with the objectives of this Act, by order, after balancing on a plant-by-plant basis the environmental effects of use of coal against the need to fulfill the purposes of this Act prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this Act, has the capability and necessary plant equipment to burn coal. Any installation to which such an order applies shall be permitted to continue to use coal or coal byproducts as provided in

section 119(b) of the Clean Air Act. To the extent coal supplies are limited to less than the aggregate amount of coal supplies which may be necessary to satisfy the requirements of those installations which can be expected to use coal (including installations to which orders may apply under this subsection), the Administrator shall prohibit the use of natural gas and petroleum products for those installations where the use of coal will have the least adverse environmental impact. A prohibition on use of natural gas and petroleum products under this subsection shall be contingent upon the availability of coal, coal transportation facilities, and the maintenance of reliability of service in a given service area. The Administrator shall require that fossil-fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable of using coal as a primary energy source instead of or in addition to other fossil fuels. No fossil-fuel-fired electric powerplant may be required under this section to be so designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) if an adequate and reliable supply of coal is not available and is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Administrator shall consider the existence and effects of any contractual

commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

(b) The Administrator may, by rule, prescribe a system for allocation of coal to users thereof in order to attain the objectives specified in this section.

SEC. 106. MATERIALS ALLOCATION.

(a) Beginning 60 days after the date of enactment of this Act, the Administrator may, by rule or order, require the allocation of, or the performance under contracts or orders (other than contracts of employment) relating to, supplies of materials and equipment if he makes the findings required by subsection (c) of this section.

(b) Not later than 30 days after the date of enactment of this Act the Administrator shall report to the Congress with respect to the manner in which the authorities contained in subsection (a) will be administered. This report shall include but not be limited to the manner in which allocations will be made, the procedure for requests and appeals, the criteria for determining priorities as between competing requests, and the office or agency which will administer such authorities.

(c) The authority granted in this section may not be used to control the general distribution of any supplies of

materials and equipment in the marketplace unless the Administrator finds that—

(1) such supplies are scarce, critical, and essential to maintain or further exploration, production, refining, and required transportation of energy supplies and for the construction and maintenance of energy facilities, and

(2) maintenance or furtherance of exploration, production, refining, and required transportation of energy supplies and the construction and maintenance of energy facilities during the energy shortage cannot reasonably be accomplished without exercising the authority specified in subsection (a) of this section.

SEC. 107. FEDERAL ACTIONS TO INCREASE AVAILABLE DOMESTIC PETROLEUM SUPPLIES.

(a) The Administrator may, by rule or order, until June 30, 1975, require the following measures to supplement domestic energy supplies:

(1) the production of designated existing domestic oilfields, at their maximum efficient rate of production, which is the maximum rate at which production may be sustained without detriment to the ultimate recovery of oil and gas under sound engineering and economic principles. Such fields are to be designated by the Secretary of the Interior, after consultation with the appropriate

State regulatory agency. Data to determine the maximum efficient rate of production shall be supplied to the Secretary of the Interior by the State regulatory agency which determines the maximum efficient rate of production and by the operators who have drilled wells in, or are producing oil and gas from such fields;

(2) if necessary to meet essential energy needs, production of certain designated existing domestic oilfields at rates in excess of their currently assigned maximum efficient rates. Fields to be so designated, by the Secretary of the Interior or the Secretary of the Navy as to the Federal lands or as to Federal interests in lands under their respective jurisdiction, shall be those fields where the types and quality of reservoirs are such as to permit production at rates in excess of the currently assigned sustainable maximum efficient rate for periods of ninety days or more without excessive risk of losses in recovery; and

(3) the adjustment of processing operations of domestic refineries to produce refined products in proportions commensurate with national needs and consistent with the objectives of section 4(b) of the Emergency Petroleum Allocation Act of 1973.

(b) Nothing in this section shall be construed to authorize the production from any naval petroleum reserve

now subject to the provisions of chapter 641 of title 10, United States Code.

SEC. 108. OTHER AMENDMENTS TO THE EMERGENCY PETROLEUM ALLOCATION ACT OF 1973.

(a) Section 4 of the Emergency Petroleum Allocation Act of 1973 (as amended by section 103 of this Act) is further amended by adding at the end of such section the following new subsection:

"(i) If any provision of the regulation under subsection (a) provides that any allocation of residual fuel oil or refined petroleum products is to be based on use of such a product or amounts of such product supplied during a historical period, the regulation shall contain provisions designed to assure that the historical period can be adjusted (or other adjustments in allocations can be made) in order to reflect regional disparities in use, population growth or unusual factors influencing use (including unusual changes in climatic conditions), of such oil or product in the historical period. This subsection shall take effect 30 days after the date of enactment of the Standby Energy Emergency Authorities Act. Adjustments for such purposes shall take effect no later than 6 months after the date of enactment of this subsection. Adjustments to reflect population growth shall be based upon the most current figures available from the United States Bureau of the Census."

(b) Section 4(g)(1) of the Emergency Petroleum Allocation Act of 1973 is amended by striking out "February 28, 1975" in each case the term appears and inserting in each case "June 30, 1975".

(c) Section 4(b)(1)(G) of the Emergency Petroleum Allocation Act of 1973 is amended to read as follows:

"(G) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of exploration for, and production or extraction of—

"(i) fuels, and

"(ii) minerals essential to the requirements of the United States,

and for required transportation related thereto,".

(d) The Administrator shall, within 30 days from the date of the enactment of this Act, report to the Congress with respect to shortages of petrochemical feedstocks, of steps taken to alleviate any such shortages, the unemployment impact resulting from such shortages, and any legislative recommendations which he deems necessary to alleviate such shortages.

SEC. 109. PROTECTION OF FRANCHISED DEALERS.

(a) As used in this section:

(1) The term "distributor" means a person engaged in the sale, consignment, or distribution of petro-

leum products to wholesale or retail outlets whether or not it owns, leases, or in any way controls such outlets.

(2) The term "franchise" means any agreement or contract between a refiner or a distributor and a retailer or between a refiner and distributor, under which such retailer or distributor is granted authority to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or distributor, or any agreement or contract between such parties under which such retailer or distributor is granted authority to occupy premises owned, leased, or in any way controlled by a party to such agreement or contract, for the purpose of engaging in the distribution or sale of petroleum products for purposes other than resale.

(3) The term "refiner" means a person engaged in the refining or importing of petroleum products.

(4) The term "retailer" means a person engaged in the sale of any refined petroleum product for purposes other than resale within any State, either under a franchise or independent of any franchise, or who was so engaged at any time after the start of the base period.

(b) (1) A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless he furnishes prior notification pursuant to this paragraph to each distributor or retailer affected thereby. Such notification shall be

in writing and sent to such distributor or retailer by certified mail not less than 90 days prior to the date on which such franchise will be canceled, not renewed, or otherwise terminated. Such notification shall contain a statement of intention to cancel, not renew, or to terminate together with the reasons therefor, the date on which such action shall take effect, and a statement of the remedy or remedies available to such distributor or retailer under this section together with a summary of the applicable provisions of this section.

(2) A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless the retailer or distributor whose franchise is terminated failed to comply substantially with any essential and reasonable requirement of such franchise or failed to act in good faith in carrying out the terms of such franchise, or unless such refiner or distributor withdraws entirely from the sale of refined petroleum products in commerce for sale other than resale in the United States.

(c) (1) If a refiner or distributor engages in conduct prohibited under subsection (b) of this section, a retailer or a distributor may maintain a suit against such refiner or distributor. A retailer may maintain such suit against a distributor or a refiner whose actions affect commerce and whose products with respect to conduct prohibited under paragraph (1) or (2) of subsection (b) of this section,

he sells or has sold, directly or indirectly, under a franchise. A distributor may maintain such suit against a refiner whose actions affect commerce and whose products he purchases or has purchased or whose products he distributes or has distributed to retailers.

(2) The court shall grant such equitable relief as is necessary to remedy the effects or conduct prohibited under subsection (b) of this section which it finds to exist including declaratory judgment and mandatory or prohibitive injunctive relief. The court may grant interim equitable relief, and actual and punitive damages (except for actions for a failure to renew) where indicated, in suits under this section, and may, unless such suit is frivolous, direct that costs, including reasonable attorney and expert witness fees, be paid by the defendant. In the case of actions for a failure to renew, damages shall be limited to actual damages including the value of the dealer's equity.

(3) A suit under this section may be brought in the district court of the United States for any judicial district in which the distributor or the refiner against whom such suit is maintained resides, is found, or is doing business, without regard to the amount in controversy.

(d) The provisions of this section expire at midnight, June 30, 1975, but such expiration shall not affect any pending action or pending proceeding, civil or criminal, not

finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, June 30, 1975, except that no suit under this section, which is based upon an act committed prior to midnight, June 30, 1975, shall be maintained unless commenced within 3 years after such act.

SEC. 110. PROHIBITIONS ON UNREASONABLE ACTIONS.

(a) Action taken under authority of this Act, the Emergency Petroleum Allocation Act of 1973, or other Federal law resulting in the allocation of petroleum products and electrical energy among classes of users or resulting in restrictions on use of petroleum products and electrical energy, shall be equitable, shall not be arbitrary or capricious, and shall not unreasonably discriminate among classes of users, unless the Administrator determines such a policy would be inconsistent with the purposes of this Act and publishes his finding in the Federal Register, allocations shall contain provisions designed to foster reciprocal and nondiscriminatory treatment by foreign countries of United States citizens engaged in commerce.

(b) To the maximum extent practicable, any restriction on the use of energy shall be designed to be carried out in such manner so as to be fair and to create a reasonable distribution of the burden of such restriction on all sectors of the economy, without imposing an unreasonably dispro-

portionate share of such burden on any specific industry, business or commercial enterprise, or on any individual segment thereof and shall give due consideration to the needs of commercial, retail, and service establishments whose normal function is to supply goods and services of an essential convenience nature during times of day other than conventional daytime working hours.

SEC. 111. REGULATED CARRIERS.

(a) The Interstate Commerce Commission shall, by expedited proceedings, adopt appropriate rules under the Interstate Commerce Act which eliminate restrictions on the operating authority of any motor common carrier of property which require excessive travel between points with respect to which such motor common carrier has regularly performed service under authority issued by the Commission. Such rules shall assure continuation of essential service to communities served by any such motor common carrier.

(b) Within 45 days after the date of enactment of this Act, the Civil Aeronautics Board, the Federal Maritime Commission, and the Interstate Commerce Commission shall report separately to the appropriate committees of the Congress on the need for additional regulatory authority in order to conserve fuel during the period beginning on the date of enactment of this Act and ending on June 30, 1975, while continuing to provide for the public convenience and necessity. Each such report shall identify with specificity—

(1) the type of regulatory authority needed;

(2) the reasons why such authority is needed;

(3) the probable impact on fuel conservation of such authority;

(4) the probable effect on the public convenience and necessity of such authority; and

(5) the competitive impact, if any, of such authority.

Each such report shall further make recommendations with respect to changes in any existing fuel allocation programs which are deemed necessary to provide for the public convenience and necessity during such period.

SEC. 112. ANTITRUST PROVISIONS.

(a) Except as specifically provided in subsection (i), no provision of this Act shall be deemed to convey to any person subject to this Act any immunity from civil and criminal liability or to create defenses to actions, under the antitrust laws.

(b) As used in this section, the term "antitrust laws" means—

(1) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) the Act entitled "An Act to supplement exist-

ing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(4) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(c) (1) To achieve the purposes of this Act, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. Any such advisory committees shall be subject to the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. App. I), whether or not such Act or any of its provisions expires or terminates during the term of this Act or of such committees, and in all cases shall be chaired by a regular full-time Federal employee and shall include representatives of the public. The meetings of such committees shall be open to the public.

(2) A representative of the Federal Government shall be in attendance at all meetings of any advisory committee established pursuant to this section. The Attorney General

and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(3) A full and complete verbatim transcript shall be kept of all advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of section 552 (b) (1) and (b) (3) of title 5, United States Code.

(d) The Administrator, subject to the approval of the Attorney General and the Federal Trade Commission, shall promulgate, by rule, standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing crude oil, residual fuel oil or any refined petroleum product may develop and implement voluntary agreements and plans of action to carry out such agreements which the Administrator determines are necessary to accomplish the objectives stated in section 4 (b) of the Emergency Petroleum Allocation Act of 1973.

(e) The standards and procedures under subsection (d) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that—

(1) Such agreements and plans of action shall be developed by meetings of committees, councils, or other interested segments of the petroleum industry and of groups which include representatives of the public, of industrial, municipal, and private consumers, and shall in all cases be chaired by a regular full-time Federal employee;

(2) Meetings held to develop a voluntary agreement or a plan of action under this subsection shall permit attendance by interested persons and shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission and to the public in the affected community;

(3) Interested persons shall be afforded an opportunity to present, in writing and orally, data, views, and arguments at such meetings;

(4) A full and complete verbatim transcript shall be kept of any meeting, conference, or communication held to develop, implement, or carry out a voluntary agreement or a plan of action under this subsection and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be available for public inspection and

copying, subject to provisions of sections 552 (b) (1) and (b) (3) of title 5, United States Code.

(f) The Federal Trade Commission may exempt types or classes of meetings, conferences, or communications from the requirements of subsections (c) (3) and (e) (4), provided such meetings, conferences, or communications are ministerial in nature and are for the sole purpose of implementing or carrying out a voluntary agreement or plan of action authorized pursuant to this section. Such ministerial meeting, conference, or communication may take place in accordance with such requirements as the Federal Trade Commission may prescribe by rule. Such persons participating in such meeting, conference, or communication shall cause a record to be made specifying the date such meeting, conference, or communication took place and the persons involved, and summarizing the subject matter discussed. Such record shall be filed with the Federal Trade Commission and the Attorney General, where it shall be made available for public inspection and copying.

(g) (1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, implementation, and carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anti-

competitive effects while achieving substantially the purposes of this Act. Each shall have the right to review, amend, modify, disapprove, or prospectively revoke, on its own motion or upon the request of any interested person, any plan of action or voluntary agreement at any time, and, if revoked, thereby withdraw prospectively the immunity which may be conferred by subsection (i) of this section.

(2) Any voluntary agreement or plan of action entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission twenty days before being implemented, where it shall be made available for public inspection and copying.

(h) (1) The Attorney General and the Federal Trade Commission shall monitor the development, implementation, and carrying out of plans of action and voluntary agreements authorized under this section to assure the protection and fostering of competition and the prevention of anticompetitive practices and effects.

(2) The Attorney General and the Federal Trade Commission shall promulgate joint regulations concerning the maintenance of necessary and appropriate documents, minutes, transcripts, and other records related to the development, implementation, or carrying out of plans of action or voluntary agreements authorized pursuant to this Act.

(3) Persons developing, implementing, or carrying out

plans of action or voluntary agreements authorized pursuant to this Act shall maintain those records required by such joint regulations. The Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and upon reasonable notice.

(4) The Federal Trade Commission and the Attorney General may each prescribe such rules and regulations as may be necessary or appropriate to carry out their responsibilities under this Act. They may both utilize for such purposes and for purposes of enforcement, any and all powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law, including the antitrust laws; and wherever such provision of law refers to "the purposes of this Act" or like terms, the reference shall be understood to be this Act.

(i) There shall be available as a defense to any civil or criminal action brought under the antitrust laws in respect of actions taken in good faith to develop and implement a voluntary agreement or plan of action to carry out a voluntary agreement by persons engaged in the business of producing, refining, marketing, or distributing crude oil, residual fuel oil, for any refined petroleum product that—

(1) such action was—

(A) authorized and approved pursuant to this section, and

(B) undertaken and carried out solely to achieve the purposes of this section and in compliance with the terms and conditions of this section, and the rules promulgated hereunder; and

(2) such persons fully complied with the requirements of this section and the rules and regulations promulgated hereunder.

(j) No provision of this Act shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred: (1) prior to the enactment of this Act, (2) outside the scope and purpose or not in compliance with the terms and conditions of this Act and this section, or (3) subsequent to its expiration or repeal.

(k) Effective on the date of enactment of this Act, this section shall apply in lieu of section 6(c) of the Emergency Petroleum Allocation Act of 1973. All actions taken and any authority or immunity granted under such section 6(c) shall be hereafter taken or granted, as the case may be, pursuant to this section.

(l) The provisions of section 708 of the Defense Production Act of 1950, as amended, shall not apply to any action authorized to be taken under this Act or the Emergency Petroleum Allocation Act of 1973.

(m) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once very 6 months, a report on the impact on competition and on small business of actions authorized by this section.

(n) The authority granted by this section (including any immunity under subsection (i)) shall terminate on June 30, 1975.

(o) The exercise of authority provided in section 111 shall not have as a principal purpose or effect the substantial lessening of competition among carriers affected. Actions taken pursuant to that subsection shall be taken only after providing from the beginning an adequate opportunity for participation by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division, who shall propose any alternative which would avoid or overcome, to the greatest extent practicable, any anticompetitive effects while achieving the purposes of this Act.

SEC. 113. EXPORTS.

(a) The Administrator is authorized by rule or order, to restrict exports of coal, natural gas, petroleum products, and petrochemical feedstocks, and of supplies of materials and equipment which he determines to be necessary to maintain or further exploration, production, refining, and

required transportation of domestic energy supplies and for the construction and maintenance of energy facilities within the United States, under such terms and conditions as he determines to be appropriate and necessary to carry out the purpose of this Act.

(b) In the administration of the restrictions under subsection (a) of this section, the Administrator may request and, if so, the Secretary of Commerce shall, pursuant to the procedures established by the Export Administration Act of 1969 (but without regard to the phrase "and to reduce the serious inflationary impact of abnormal foreign demand" in section 3(2)(A) of such Act), impose such restrictions on exports of coal, natural gas, petroleum products, and petrochemical feedstocks, and of supplies of materials and equipment which the Administrator determines to be necessary to maintain or further exploration, production, refining, and required transportation of domestic energy supplies and for the construction and maintenance of energy facilities within the United States, as the Administrator determines to be appropriate and necessary to carry out the purposes of this Act.

(c) Rules or orders of the Administrator under subsection (a) of this section and actions by the Secretary of Commerce pursuant to subsection (b) of this section shall take into account the historical trading relations of the United States with Canada and Mexico.

SEC. 114. EMPLOYMENT IMPACT AND UNEMPLOYMENT ASSISTANCE.

(a) The President shall take into consideration and shall minimize, to the fullest extent practicable, any adverse impact of actions taken pursuant to this Act upon employment. All agencies of Government shall cooperate fully under their existing statutory authority to minimize any such adverse impact.

(b) (1) The Secretary of Labor shall make grants, in accordance with regulations prescribed by him, to States to provide cash benefits to any individual who is unemployed as a result of disruptions, dislocations, or shortages of energy supplies and resources, and who is not eligible for unemployment assistance or who has exhausted his rights to such assistance (within the meaning of paragraph (4) (B)).

(2) Regulations of the Secretary of Labor under paragraph (1) may require that States enter into agreements as a condition of receiving a grant under this subsection, and such regulations—

(A) shall provide that—

(i) a benefit under this subsection shall be available to any individual who is unemployed as a result of disruptions, dislocations, or shortages of energy supplies and resources and who is not

eligible for unemployment assistance (without regard to whether such unemployment commenced before or after the date of enactment of this Act).

(ii) a benefit provided to such an individual shall be available to such individual for any week of unemployment which begins after the date on which this Act is enacted and before July 1, 1975, in which such individual is unemployed;

(iii) the amount of a benefit with respect to a week of unemployment shall be equal to—

(I) in the case of an individual who has exhausted his eligibility for unemployment assistance, the amount of the weekly unemployment compensation payment for which he was most recently eligible; or

(II) in the case of any other individual, an amount which shall be set by the State in which the individual was last employed at a level which shall take into account the benefit levels provided by State law for persons covered by the State's unemployment compensation program, but which shall not be less than the minimum weekly amount, nor more than the maximum weekly amount, under the unemployment compensation law of the State; and

(B) may provide that individuals eligible for a benefit under this subsection have been employed for up to 1 month in the 52-week period preceding the filing of a claim for benefits under this subsection.

(3) Unemployment resulting from disruptions, dislocations, or shortages of energy supplies and resources shall be defined in regulations of the Secretary of Labor. Such regulations shall provide that such unemployment includes unemployment clearly attributable to such disruptions, disclocations or shortages, fuel allocations, fuel pricing, consumer buying decisions influenced by such disruptions, dislocations, or shortages, and governmental action associated with such disruptions, dislocations, or shortages. The determination as to whether an individual is unemployed as a result of such disruptions, dislocations, or shortages (within the meaning of such regulations) shall be made by the State in which the individual was last employed in accordance with such industry, business, or employer certification process or such other determination procedure (or combination thereof) as the Secretary of Labor shall, consistent with the purposes of paragraph (1) of this subsection, determine as most appropriate to minimize administrative costs, appeals, or other delay, in paying to individuals the cash allowances provided under this section.

(4) For purposes of this subsection—

(A) an individual shall be considered unemployed in any week if he is—

(i) not working,

(ii) able to work, and

(iii) available for work,

within the meaning of the State unemployment compensation law in effect in the State in which such individual was last employed, and provided that he would not be subject to disqualification under that law for such week, if he were eligible for benefits under such law;

(B) (1) the phrase "not eligible" for unemployment assistance means not eligible for compensation under any State or Federal unemployment compensation law (including the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.)) with respect to such week of unemployment, and is not receiving compensation with respect to such week of unemployment under the unemployment compensation law of Canada; and

(ii) the phrase "exhausted his rights to such assistance" means exhausted all rights to regular, additional, and extended compensation under all State unemployment compensation laws and chapter 85 of title 5, United States Code, and has no further rights to regular, additional, or extended compensation under any

State or Federal unemployment compensation law (including the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.)) with respect to such week of unemployment, and is not receiving compensation with respect to such week of unemployment under the unemployment compensation law of Canada.

(c) On or before the sixtieth day following the date of enactment of this Act, the President shall report to the Congress concerning the present and prospective impact of energy shortages upon employment. Such report shall contain an assessment of the adequacy of existing programs in meeting the needs of adversely affected workers and shall include legislative recommendations which the President deems appropriate to meet such needs, including revisions in the unemployment insurance laws.

SEC. 115. USE OF CARPOOLS.

(a) The Secretary of Transportation shall encourage the creation and expansion of the use of carpools as a viable component of our nationwide transportation system. It is the intent of this section to maximize the level of carpool participation in the United States.

(b) The Secretary of Transportation is directed to establish within the Department of Transportation an "Office of Carpool Promotion" whose purpose and responsibilities shall include—

(1) responding to any and all requests for information and technical assistance on carpooling and carpooling systems from units of State and local governments and private groups and employees;

(2) promoting greater participation in carpooling through public information and the preparation of such materials for use by State and local governments;

(3) encouraging and promoting private organizations to organize and operate carpool systems for employees;

(4) promoting the cooperation and sharing of responsibilities between separate, yet proximately close, units of government in coordinating the operations of carpool systems; and

(5) promoting other such measures that the Secretary determines appropriate to achieve the goal of this subsection.

(c) The Secretary of Transportation shall encourage and promote the use of incentives such as special parking privileges, special roadway lanes, toll adjustments, and other incentives as may be found beneficial and administratively feasible to the furtherance of carpool ridership, and consistent with the obligations of the State and local agencies which provide transportation services.

(d) The Secretary of Transportation shall allocate the

funds appropriated pursuant to the authorization of subsection (f) according to the following distribution between the Federal and State or local units of government:

(1) The initial planning process—up to 100 percent Federal.

(2) The systems design process—up to 100 percent Federal.

(3) The initial startup and operation of a given system—60 percent Federal and 40 percent State or local with the Federal portion not to exceed 1 year.

(e) Within 12 months of the date of enactment of this Act, the Secretary of Transportation shall make a report to Congress of all his activities and expenditures pursuant to this section. Such report shall include any recommendations as to future legislation concerning carpooling.

(f) The sum of $5,000,000 is authorized to be appropriated for the conduct of programs designed to achieve the goals of this section, such authorization to remain available for 2 years.

(g) For purposes of this section, the terms "local governments" and "local units of government" include any metropolitan transportation organization designated as being responsible for carrying out section 134 of title 23, United States Code.

(h) As an example to the rest of our Nation's automobile users, the President of the United States shall take

such action as is necessary to require all agencies of Government, where practical, to use economy model motor vehicles.

(i) (1) The President shall take action to require that no Federal official or employee in the executive branch below the level of Cabinet officer be furnished a limousine for individual use. The provisions of this subsection shall not apply to limousines furnished for use by officers or employees of the Federal Bureau of Investigation, or to those persons whose assignments necessitate transportation by limousines because of diplomatic assignment by the Secretary of State.

(2) For purposes of this subsection, the term "limousine" means a type 6 vehicle as defined in the Interim Federal Specifications issued by the General Services Administration, December 1, 1973.

(3) (A) The President shall take action to insure the enforcement of 31 U.S.C. 638a.

(B) No funds shall be expended under authority of this or any other Act for the purpose of furnishing a chauffeur in a vehicle operated in violation of section 638a of title 31, United States Code, or this Act.

SEC. 116. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.

(a) (1) Subject to paragraphs (2), (3), and (4) of this subsection, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply to any rule, regu-

lation, or order under this title or under section 4 (h) of the Emergency Petroleum Allocation Act of 1973; except that this subsection shall not apply to any rule, regulation, or order issued under the Emergency Petroleum Allocation Act of 1973 (as amended by this title) other than section 4 (h) thereof, nor to any rule under section 111 of this title.

(2) Notice of all proposed substantive rules and orders of general applicability described in paragraph (1) shall be given by publication of such proposed rule or order in the Federal Register. In each case, a minimum of 10 days following such publication shall be provided for opportunity to comment; except that the requirements of this paragraph as to time of notice and opportunity to comment may be waived where the President finds that strict compliance would seriously impair the operation of the program to which such rule or order relates and such findings are set out in detail in such rule or order. In addition, public notice of all rules or orders promulgated by officers of a State or political subdivision thereof or to State or local boards pursuant to this Act shall to the maximum extent practicable be achieved by publication of such rules or orders in a sufficient number of newspapers of statewide circulation calculated to receive widest possible notice.

(3) In addition to the requirements of paragraph (2), unless the President determines that a rule or order described

in paragraph (1) is not likely to have a substantial impact on the Nation's economy or upon a significant segment thereof, an opportunity for oral presentation of views, data, and argument shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the implementation of such rule or order, but in all cases such opportunity shall be afforded no later than 45 days after the implementation of any such rule or order. A transcript shall be kept of any oral presentation.

(4) Any officer or agency authorized to issue rules or orders described in paragraph (1) shall provide for the making of such adjustments, consistent with the other purposes of this Act or the Emergency Petroleum Allocation Act of 1973 (as the case may be), as may be necessary to prevent special hardships, inequity, or an unfair distribution of burdens and shall in rules prescribed by it establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, or an exception to or exemption from, such rules and orders. If such person is aggrieved or adversely affected by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the officer or agency and may obtain judicial review in accordance with subsection (b) or other applicable law when such denial becomes final. The officer or agency shall, in rules prescribed by it,

establish appropriate procedures, including a hearing where deemed advisable, for considering such requests for action under this paragraph.

(b) (1) Judicial review of administrative rulemaking of general and national applicability done under this title may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days from the date of promulgation of any such rule or regulation, and judicial review of administrative rulemaking of general, but less than national applicability done under this title may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule or regulation, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule or regulation is to have effect.

(2) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising under this title, or under regulations or orders issued thereunder, except any actions taken by the Civil Aeronautics Board, the Interstate Commerce Commission, the Federal Power Commission, or the Federal Maritime Commission, or any actions taken to implement or enforce any rule or order by any officer

of a State or political subdivision thereof or State or local board which has been delegated authority under section 120 of this Act except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the constitutionality of this title or the validity of action taken by any agency under this title). If in any such proceeding an issue by way of defense is raised based on the constitutionality of this Act or the validity of agency action under this title, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code.

(3) This subsection shall not apply to any rule, regulation, or order issued under the Emergency Petroleum Allocation Act of 1973 or to any rule under section 111 of this title.

(4) The finding required by section 4(h)(2) of the Emergency Petroleum Allocation Act of 1973 shall not be judicially reviewable under this subsection or under any other provision of law.

(c) The Administrator may by rule prescribe procedures for State or local boards which carry out functions under this Act or the Emergency Petroleum Allocation Act of 1973. Such procedures shall apply to such boards in lieu

of subsection (a), and shall require that prior to taking any action, such boards shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) at least 10 days before taking the action. Such boards shall be of balanced composition reflecting the makeup of the community as a whole.

(d) In addition to the requirements of section 552 of title 5, United States Code, any agency authorized by this title of the Emergency Petroleum Allocation Act of 1973 to issue rules or orders shall make available to the public all internal rules and guidelines which may form the basis, in whole or in part, for any rule or order with such modifications as are necessary to insure confidentiality protected under such section 552. Such agency shall, upon written request of a petitioner filed after any grant or denial of a request for exception or exemption from rules or orders, furnish the petitioner with a written opinion setting forth applicable facts and the legal basis in support of such grant or denial. Such opinions shall be made available to the petitioner and the public within 30 days of such request and with such modifications as are necessary to insure confidentiality of information protected under such section 552.

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SEC. 117. PROHIBITED ACTS.

It shall be unlawful for any person to violate any provision of title I of this Act (other than provisions of this Act which make amendments to the Emergency Petroleum Allocation Act of 1973 and section 111) or to violate any rule, regulation (including an energy conservation plan), or order issued pursuant to any such provision.

SEC. 118. ENFORCEMENT.

(a) Whoever violates any provision of section 117 shall be subject to a civil penalty of not more than $2,500 for each violation.

(b) Whoever willfully violates any provision of section 117 shall be fined not more than $5,000 for each violation.

(c) It shall be unlawful for any person to offer for sale or distribute in commerce any product or commodity in violation of an applicable order or regulation issued pursuant to this Act. Any person who knowingly and willfully violates this subsection after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to this Act shall be fined not more than $50,000 or imprisoned not more than 6 months, or both.

(d) Whenever it appears to any person authorized by the Administrator to exercise authority under this Act that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a viola-

tion of section 117, such person may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by section 117.

(e) Any person suffering legal wrong because of any act or practice arising out of any violation of section 117 may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this subsection shall authorize any person to recover damages.

SEC. 119. SMALL BUSINESS INFORMATION.

In order to achieve the purposes of this Act—

(1) the Small Business Administration (A) shall to the maximum extent possible provide small business enterprises with full information concerning the provisions of the programs provided for in this Act which particularly affect such enterprises, and the activities of the various departments and agencies under such provisions, and (B) shall, as a part of its annual report, provide to the Congress a summary of the actions taken under

programs provided for in this Act which have particularly affected such enterprises;

(2) to the extent feasible, Federal and other governmental bodies shall seek the views of small business in connection with adopting rules and regulations under the programs provided for in this Act and in administering such programs; and

(3) in administering the programs provided for in this Act, special provision shall be made for the expeditious handling of all requests, applications, or appeals from small business enterprises.

SEC. 120. DELEGATION OF AUTHORITY AND EFFECT ON STATE LAW.

(a) The Administrator may delegate any of his functions under the Emergency Petroleum Allocation Act of 1973 or this Act to any officer or employee of the agency which he heads as he deems appropriate. The Administrator may delegate any of his functions relative to implementation and enforcement of the Emergency Petroleum Allocation Act of 1973 or this Act to officers of a State or political subdivision thereof or to State or local boards of balanced composition reflecting the makeup of the community as a whole. Such officers or boards shall be designated and established in accordance with regulations which the Administration shall promulgate under this Act. Section 5(b) of the Emer-

gency Petroleum Allocation Act of 1973 is repealed effective on the effective date of the transfer of functions under such Act to the Administrator pursuant to subsection (c) of this section.

(b) No State law or State program in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation, order, or energy conservation plan issued pursuant to this Act except insofar as such State law or State program is inconsistent with the provisions of this Act, or such a regulation, order, or plan.

(c) Effective on the date on which the Administrator of the Federal Energy Administration (established by H.R. 11793, Ninety-third Congress) first takes office, all functions, powers, and duties of the President under the Emergency Petroleum Allocation Act of 1973 (as amended by this Act), and of any officer, department, agency, or State (or officer thereof) under such Act (other than functions vested by section 6 of such Act in the Federal Trade Commission, the Attorney General, or the Antitrust Division of the Department of Justice), are transferred to the Administrator. All personnel, property, records, obligations, and commitments used primarily with respect to functions transferred under the preceding sentence shall be transferred to the Administrator.

SEC. 121. GRANTS TO STATES.

Any funds authorized to be appropriated under section 125(b) shall be available for the purpose of making grants to States to which the Administrator has delegated authority under section 120 of this Act, or for the administration of appropriate State or local energy conservation programs which are the basis of an exemption made pursuant to section 104(a)(2) of this Act from a Federal energy conservation plan which has taken effect under section 104 of this Act. The Administrator shall make such grants upon such terms and conditions as he may prescribe by rule.

SEC. 122. ENERGY INFORMATION REPORTS.

(a) For the purpose of assuring that the Administrator, the Congress, the States, and the public have access to and are able to obtain reliable energy information throughout the duration of this Act, the Administrator, in addition to and not in limitation of any other authority, is authorized to request, acquire, and collect such energy information as he determines to be necessary to assist in the formulation of energy policy or to carry out the purposes of this Act or the Emergency Petroleum Allocation Act of 1973.

(b) In carrying out the provisions of subsection (a) the Administrator shall have the power to—

(1) require, by rule, any person who is engaged in the production, processing, refining, transportation by

pipeline or distribution (other than at the retail level) of energy resources to submit reports;

(2) sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents;

(3) require of any person, by general or special order, answers in writing to interrogatories, requests for report, or other information; and such answers or submissions shall be made within such reasonable period and under oath or otherwise as the Administrator may determine; and

(4) to administer oaths.

(c) For the purpose of verifying the accuracy of any energy information requested, acquired, or collected by the Administrator, officers or employees duly designated by him upon presenting appropriate credentials and a written notice to the owner, operator, or at reasonable times and in a reasonable manner, any facility or business premises, to inventory and sample any stock of energy resources therein, and to examine and copy records, reports, and documents relating to energy information.

(d) (1) The Administrator shall exercise the authorities granted to him under subsection (b) to develop within 30 days after the date of enactment of this Act, as full and accurate a measure as is reasonably practicable of—

(A) domestic reserves and production;

(B) imports; and

(C) inventories;

of petroleum products, natural gas, and coal.

(2) for Each calendar quarter beginning with the first complete calendar quarter following the date of enactment of this Act, the Administrator shall develop and publish quarterly reports containing the following:

(A) Report of petroleum product, natural gas, and coal imports; relating to country of origin, arrival point, quantity received, geographic distribution within the United States.

(B) Report of crude oil activity; relating capacity of producers' allocations to refiners, and fuels to be made.

(C) Report of inventories, nationally, and by region and State—

(i) for various refined petroleum products, relating refiners, refineries, suppliers to refiners, share of market, and allocation fractions;

(ii) for various refined petroleum products, previous quarter deliveries and anticipated 3-month available supplies;

(iii) for refinery yields of the various refined petroleum products, percent of activity, and type of refinery;

(iv) with respect to the summary of anticipated monthly supply of refined petroleum products, amount of set aside for assignment by the State, anticipated State requirements, excess or shortfall of supply, and allocation fraction of base year; and

(v) with respect to liquefied petroleum gas by State and owner: quantities stored, and existing capacities, and previous priorities on types, inventories of suppliers, and changes in supplier inventories.

(3) In developing the energy information called for in this section, the Administrator may, if he determines that it would not be practicable to do otherwise, use the statistical method of "sampling".

(e) In order to avoid or minimize duplicative reporting, the Administrator may request and acquire energy information from any other department or agency of Federal Government, except that any such department or agency shall refuse to supply such information if its disclosure to the Administrator would otherwise be prohibited by law.

(f) Any person required to submit energy information to the Administrator under this section may at the time he submits such information request the Administrator to declare such information, in whole or in part, to be con-

fidential and to not disclose such information except as permitted under subsection (d) (2). The Administrator shall, within 10 days after receipt of such request, initiate and (except where good cause is stated) complete within 30 days thereafter, an administrative proceeding affording an opportunity for hearing under sections 556 and 557 of title 5, United States Code, to determine whether such information concerns or relates to trade secrets or other matter referred to in section 1905 of title 18, United States Code, within the meaning of such section 1905.

(g) (1) Information determined by the Administrator to concern or relate to trade secrets or other matter referred to in section 1905 of title 18, United States Code, shall be kept confidential and not be disclosed except that disclosure may be made (A) to other officers or employees concerned with carrying out this Act and the Emergency Petroleum Allocation Act of 1973 concerned with the formulation of energy policy, (B) when relevant, in any proceeding under this Act or the Emergency Petroleum Allocation Act of 1973, or (C) to the committees of Congress upon request of the chairman of any such committee.

(2) Such information when disclosed in a proceeding under this Act or the Emergency Petroleum Allocation Act of 1973 shall be disclosed by the Administrator in a manner which preserves confidentiality to the extent practicable

without impairing the proceeding and such information when submitted to the committees of Congress upon request shall not be disclosed except by authority of the committee.

(3) Paragraph (2) of this subsection shall govern disclosure of such information by committees of the Congress and is enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such shall be considered as a part of the rules of each House, respectively, or of that House to which it specifically applies, and such rule shall supersede other rules only to the extent that they are inconsistent therewith, and

(B) with full recognition of the constitutional right of either House to change such rule (so far as it relates to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(h) As used in this section—

(1) the term "Federal agency" shall have the meaning of the term "executive agency" as defined in section 105 of title 5, United States Code;

(2) the term "energy information" includes all information in whatever form on mineral fuel reserves, exploration, extraction, and natural energy resources (to

include petrochemical feedstocks) wherever located; production, distribution, and consumption wherever carried on; and includes matters such as corporate structure and proprietary relationships, costs, prices, capital investment and assets and other matters directly related thereto, wherever they exist; and

(3) the term "person" means any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose; wherever situated, domiciled or doing business, who directly or through other persons subject to their control do business in any part of the United States, its territories and possessions, or the District of Columbia.

(i) Information obtained by the Administrator under authority of this Act shall be available to the public in accordance with the provisions of section 552 of title 5, United States Code.

SEC. 123. INTRASTATE GAS.

Nothing in this Act shall expand the authority of the Federal Power Commission with respect to sales of nonjurisdictional natural gas.

SEC. 124. EXPIRATION.

The authority under this title to prescribe any rule or order to take other action under this title, or to enforce any such rule or order, shall expire at midnight, June 30, 1975,

but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, June 30, 1975.

SEC. 125. AUTHORIZATIONS OF APPROPRIATIONS.

(a) There are authorized to be appropriated to the Administrator to carry out his functions under this Act and under other laws, and to make grants to States under section 121, $75,000,000 for the fiscal year ending June 30, 1974, $75,000,000 for the fiscal year ending June 30, 1975.

(b) For the purpose of making payments under grants to States under section 121, there are authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1974, and $75,000,000 for the fiscal year ending June 30, 1975.

(c) For the purpose of making payments under grants to States under section 114, there is authorized to be appropriated $500,000,000 for the fiscal year ending June 30, 1974.

SEC. 126. SEVERABILITY.

If any provision of this Act, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 127. CONTINGENCY PLANS.

(a) In order to fully inform the Congress and the public with respect to the exercise of authorities under sections 103 and 104 of this Act, the Administration shall, to the maximum extent practical, develop contingency plans in the nature of descriptive analyses of:

(1) the manner of implementation and operation of any such authority;

(2) the anticipated benefits and impacts of the provision of any plan;

(3) the role of State and local government;

(4) the procedures for appeal and review; and

(5) the Federal officers or employees who will administer any plan.

(b) Any contingency plans which describe the exercise of any authority under section 103 or 104 of this Act shall be transmitted to the Congress not later than the date on which any plan or rule relating to such contingency plan is transmitted to the Congress pursuant to the provisions of such sections.

SEC. 128. PETROLEUM PRICE CONTROL AUTHORITY.

(a) Section 4 of the Emergency Petroleum Allocation Act of 1973 is further amended by adding at the end of such section the following new subsection:

"(j) (1) No later than 30 days after the date of enact-

ment of this subsection, the President shall exercise his authority under this Act and the Economic Stabilization Act of 1970, as amended, so as to specify (or prescribe a manner for determining) equitable ceiling prices for all first sales or exchanges of crude oil, natural gas liquids, and condensate (or classifications thereof) produced in or imported into the United States.

"(2) The regulation under subsection (a) of this section shall be amended so as to provide, with respect to the prices of imported crude oil, natural gas liquids, condensate, residual fuel oil, or refined petroleum products, produced or refined by the person importing such product into the United States, or purchased or exchanged by him (directly or indirectly) from an affiliate, no more than a dollar-for-dollar passthrough of net increases in foreign taxes and in royalties paid to nonaffiliates for crude oil, natural gas liquids, or condensate, or in the actual price paid at the first purchase from a nonaffiliate of such crude oil, natural gas liquids, condensate, residual fuel oil, or refined petroleum products. The calculation of any net increase in taxes, royalties, or prices at first purchase under this paragraph shall take into consideration any reduction, by virtue of increases in foreign taxes, royalties, or prices, upon the liability of the importer or his affiliates for United States income taxes.

"(3) The regulation under subsection (a) of this section shall be amended so as to provide that any increase or re-

duction, relative to prices prevailing on May 15, 1973, in the price of crude oil, natural gas liquids, and condensates (or any classification thereof) produced in or imported into the United States, resulting from the provisions of this subsection, is passed through so as to cause a dollar-for-dollar increase or reduction in the price of any residual fuel oil or refined petroleum product (including propane) derived from such crude oil, natural gas liquids, or condensate. Such pass-through of price increases or reductions shall, to the extent practicable and consistent with the objectives of subsection (b) of this section, be allocated among products refined from such crude oil, natural gas liquids, or condensate on a proportional basis, taking into consideration historical price relationships among such products.

"(4) Every establishment of or change in a ceiling price (or manner of determining the ceiling price) specified pursuant to this subsection, and every ceiling price (or manner of determining a ceiling price) or exemption from ceiling prices that is in effect on the date of enactment of this subsection, shall be transmitted to Congress no later than the effective date of such change, or in the case of every such ceiling price (or manner for specifying such a ceiling price) or exemption from ceiling prices in effect on the date of enactment of this subsection, no later than 30 days after that date. Every such transmittal shall be accompanied and supported by a detailed statement setting forth—

"(i) the additional qualities of crude oil, natural gas liquids, or condensate, residual fuel oil, or refined petroleum products, if any, that can reasonably be expected to be produced;

"(ii) the expected effect, if any, upon the demand for crude oil, natural gas liquids, or condensate, residual fuel oil, or refined petroleum products, or

"(iii) the expected impact upon the economy as a whole, including the impact upon consumers, the general price level, and the profitability of and employment in industry and business;

"(iv) any expected significant problems of enforcement or administration; and

"(v) the expected impact on the preservation of existing competition within the petroleum industry resulting from said ceiling price, manner for specifying a ceiling price, or (in the case of the regulation in effect upon the date of this subsection) exemption from ceiling prices.

"(5) For the purpose of this subsection, the term 'equitable ceiling price' means a price which is reasonable, taking into consideration the need to obtain sufficient supplies of crude oil, residual fuel oil, and refined petroleum products, and to permit the attainment of the objectives of subsection (b) of this section, balanced against the need to

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control inflation of basic and essential goods and services and hold down costs to industrial and individual consumers.

"(6) Section 4(c)(2) of the Emergency Petroleum Allocation Act of 1973 and section 406 of Public Law 93–153 are repealed."

TITLE II—COORDINATION WITH ENVIRONMENTAL PROTECTION REQUIREMENTS

SEC. 201. SUSPENSION AUTHORITY.

Title I of the Clean Air Act (42 U.S.C. 1857 et seq.) is amended by adding at the end thereof the following new section:

"ENERGY EMERGENCY AUTHORITY

"SEC. 119. (a)(1)(A) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before November 1, 1974, temporarily suspend any stationary source fuel or emission limitation as it applies to any person, if the Administrator finds that such person will be unable to comply with such limitation during such period solely because of unavailability of types or amounts of fuels. Any suspension under this paragraph and any interim requirement on which such suspension is conditioned under paragraph (3) shall be exempted from any procedural requirements set forth in this Act or in any other provision of local, State, or Federal law, except as provided in subparagraph (B).

"(B) The Administrator shall give notice to the public of a suspension and afford the public an opportunity for written and oral presentation of views prior to granting such suspension unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In any case, before granting such a suspension he shall give actual notice to the Governor of the State, and to the chief executive officer of the local government entity in which the affected source or sources are located. The granting or denial of such suspension and the imposition of an interim requirement shall be subject to judicial review only on the grounds specified in paragraphs (2) (B) and (2) (C) of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304 (a) (2) or 307 (b) and (c) of this Act.

"(2) In issuing any suspension under paragraph (1) the Administrator is authorized to act on his own motion without application by any source or State.

"(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the source receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such

measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and (C) requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are, in fact, reasonably available to that person (as determined by the Administrator). For purposes of clause (C) of this paragraph, availability of natural gas or petroleum products which enable compliance shall not make a suspension inapplicable to a source described in subsection (b) (1) of this section.

"(4) For purposes of this section:

"(A) The term 'stationary source fuel or emission limitation' means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under this Act (other than section 303, 111(b), or 112) or contained in an applicable implementation plan, and which is designed to limit stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type or grade or pollution characteristic thereof.

"(B) The term 'stationary source' has the same meaning as such term has under section 111(a) (3).

"(b) (1) Except as provided in paragraph (2) of this subsection, any fuel-burning stationary source—

"(A) which is prohibited from using petroleum products or natural gas as fuel by reason of an order issued under section 105(a) of the Standby Energy Emergency Authorities Act, or

"(B) which (i) the Administrator of the Environmental Protection Agency determines began conversion to the use of coal as fuel during the 90-day period ending on December 15, 1973, and (ii) the Administrator of the Federal Energy Administration determines should use coal after November 1, 1974, after balancing on a plant-by-plant basis the environmental effects of such conversion against the need to fulfill the purposes of the Standby Energy Emergency Authorities Act,

and which converts to the use of coal as fuel, shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source. For purposes of this paragraph, the term 'began conversion' means action by the owner or operator of a source during the 90-day period ending December 15, 1973 (such as entering into a contract binding on the operator of the source for obtaining coal, or equipment or facilities to burn coal; expending substantial sums to permit such source to burn coal; or applying for an air pollution variance to enable the source to burn coal) which the Administrator finds evidences a decision (made prior to Decem-

ber 15, 1973) to convert to burning coal as a result of the unavailability of an adequate supply of fuels required for compliance with the applicable implementation plan, and a good faith effort to expeditiously carry out such decision.

"(2) (A) Paragraph (1) of this subsection shall apply to a source only if the Administrator finds that emissions from the source will not materially contribute to a significant risk to public health and if the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved, after notice to interested persons and opportunity for presentation of views (including oral presentation of views). A plan submitted under the preceding sentence shall be approved only if it provides (i) for compliance by the means specified in subparagraph (B), and in accordance with a schedule which meets the requirements of such subparagraph; and (ii) that such source will comply with requirements which the Administrator shall prescribe to assure that emissions from such source will not materially contribute to a significant risk to public health. The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

"(B) The Administrator shall prescribe regulations requiring that any source to which this subsection applies submit and obtain approval of its means for and schedule of compliance. Such regulations shall include requirements that

such schedules shall include dates by which such source must—

"(i) enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining a long-term supply of coal which enables such source to achieve the emission reduction required by subparagraph (C), or

"(ii) if coal which enables such source to achieve such emission reduction is not available to such source, (I) enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining a long-term supply of other coal or coal by-products, and (II) take steps to obtain continuous emission reduction systems necessary to permit such source to burn such coal or coal by-products and to achieve the degree of emission reduction required by subparagraph (C) (which steps and systems must have received prior approval of the Administrator as being adequate to effectuate the purposes of this section).

"(C) Regulations under subparagraph (B) shall require that the source achieve the most stringent degree of

emission reduction that such source would have been required to achieve under the applicable implementation plan which was in effect on the date of enactment of this section (or if no applicable implementation plan was in effect on such date, under the applicable implementation plan which takes effect after such date). Such degree of emission reduction shall be achieved as soon as practicable, but not later than January 1, 1979; except that, in the case a source for which a continuous emission reduction system is required for sulfur-related emission, reduction of such emissions shall be achieved on a date designated by the Administrator (but not later than January 1, 1979). Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable including requirements described in clauses (A) and (B) of subsection (a) (3).

"(D) The Administrator (after notice to interested persons and opportunity for presentation of views, including oral presentations of views, to the extent practicable) (i) may, prior to November 1, 1974, and shall thereafter prohibit the use of coal by a source to which paragraph (1) applies if he determines that the use of coal by such source is likely to materially contribute to a significant risk to public health; and (ii) may require such source to use coal of any particular type, grade, or pollution characteristic if such

coal is available to such source. Nothing in this subsection (b) shall prohibit a State or local agency from taking action which the Administrator is authorized to take under this subparagraph.

"(3) For purposes of this subsection, the term 'air pollution requirement' means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including this Act (except for any requirement prescribed under this subsection or section 303), and which is designed to limit stationary source emissions resulting from combustion of fuels (including a restriction on the use or content of fuels). A conversion to coal to which this subsection applies shall not be deemed to be a modification for purposes of section 111(a) (2) and (4) of this Act.

"(4) A source to which this subsection applies may, upon the expiration of the exemption under paragraph (1), obtain a one-year postponement of the application of any requirement of an applicable implementation plan under the conditions and in the manner provided in section 110(f).

"(c) The Administrator may by rule establish priorities under which manufacturers of continuous emission reduction systems shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to users in air quality control

regions with the most severe air pollution. No rule under this subsection may impair the obligation of any contract entered into before enactment of this section. No State or political subdivision may require any person to use a continuous emission reduction system for which priorities have been established under this subsection except in accordance with such priorities.

"(d) The Administrator shall study, and report to Congress not later than 6 months after the date of enactment of this subsection with respect to—

"(1) the present and projected impact on the program under this Act of fuel shortages and of allocation and end-use allocation programs;

"(2) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction systems would have on the total environment and on supplies of fuel and electricity;

"(3) the number of sources and locations which must use such technology based on projected fuel availability data;

"(4) priority schedule for implementation of continuous emission reduction technology, based on public health or air quality;

"(5) evaluation of availability of technology to burn municipal solid waste in these sources; including time schedules, priorities analysis of unregulated pollutants which will be emitted and balancing of health benefits and detriments from burning solid waste and of economic costs;

"(6) projections of air quality impact of fuel shortages and allocations;

"(7) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time frames prescribed in the Act, including associated considerations of cost, time frames, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

"(8) proposed allocations of continuous emission reduction technology for nonsolid waste producing systems to sources which are least able to handle solid waste byproduct, technologically, economically, and without hazard to public health, safety, and welfare; and

"(9) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentration of sulfur dioxide in the ambient air.

"(e) No State or political subdivision may require any person to whom a suspension has been granted under sub-

section (a) to use any fuel the unavailability of which is the basis of such person's suspension (except that this preemption shall not apply to requirements identical to Federal interim requirements under subsection (a) (1)).

"(f) (1) It shall be unlawful for any person to whom a suspension has been granted under subsection (a) (1) to violate any requirement on which the suspension is conditioned pursuant to subsection (a) (3).

"(2) It shall be unlawful for any person to violate any rule under subsection (c).

"(3) It shall be unlawful for the owner or operator of any source to fail to comply with any requirement under subsection (b) or any regulation, plan, or schedule thereunder.

"(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i) (3).

"(g) Beginning January 1, 1975, the Administrator shall publish at no less than 180-day intervals in the Federal Register the following:

"(1) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (b) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsections.

"(2) Up-to-date findings on the impact of this section upon—

"(A) applicable implementation plans, and

"(B) ambient air quality.

"(h) Nothing in this section shall affect the power of the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.

"(i) (1) In order to reduce the likelihood of early phaseout of existing electric generating facilities during the energy emergency, any electric generating powerplant (A) which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on the date of enactment of the Standby Energy Emergency Authorities Act) of the operator of such plant, (B) for which a certification to that effect has been filed by the operator of the plant with the Environmental Protection Agency and the Federal Power Commission, and (C) for which the Commission has determined that the certification has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single 1-year postponement as provided in paragraph (2).

"(2) Prior to the date on which any plant eligible under paragraph (1) is required to comply with any requirement of an applicable implementation plan, such source may apply (with the concurrence of the Governor of the State in which the plant is located) to the Administrator to postpone the applicability of such requirement to such source for not more than 1 year. If the Administrator determines, after balancing the risk to public health and welfare which may be associated with a posptonement, that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increases to pay for such costs, and other appropriate factors, then the Administrator shall grant a postponement of any such requirement.

"(3) The Administrator shall, as a condition of any postponement under paragraph (2), prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph (2).

"(j) (1) The Administrator may, after public notice and opportunity for presentation of views in accordance with section 553 of title 5, United States Code, and after consultation with the Federal Energy Administration, designate persons to whom fuel exchange orders should be issued. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any

suspension under subsection (a) of this section or conversion to coal to which subsection (b) applies or of any allocation under the Standby Energy Emergency Authorities Act or the Emergency Petroleum Allocation Act of 1973.

"(2) The Administrator of the Federal Energy Administration shall issue exchange orders to such persons as are designated by the Administrator under paragraph (1) requiring the exchange of any fuel subject to allocation under the preceding Acts effective no later than 45 days after the date of the designation under paragraph (1), unless the Administrator of the Federal Energy Administration determines, after consultation with the Administrator, that the costs or consumption of fuel, resulting from such exchange order, will be excessive.

"(3) Violation of any exchange order issued under paragraph (2) shall be a prohibited act and shall be subject to enforcement action and sanctions in the same manner and to the same extent as a violation of any requirement of the regulation under section 4 of the Emergency Petroleum Allocation Act of 1973."

SEC. 202. IMPLEMENTATION PLAN REVISIONS.

(a) Section 110(a) of the Clean Air Act is amended in paragraph (3) by inserting "(A)" after "(3)" and by adding at the end thereof the following new subparagraph:

"(B) (1) For any air quality control region in which there has been a conversion to coal under section 119(b),

the Administrator shall review the applicable implementation plan and no later than 1 year after the date of such conversion determine whether such plan must be revised in order to achieve the national primary standard which the plan implements. If the Administrator determines that any such plan is inadequate, he shall require that a plan revision be submitted by the State within 3 months after the date of notice to the State of such determination. Any plan revision which is submitted by the State after notice and public hearing shall be approved or disapproved by the Administrator, after public notice and opportunity for public hearing, but no later than 3 months after the date required for submission of the revised plan. If a plan provision (or portion thereof) is disapproved (or if a State fails to submit a plan revision), the Administrator shall, after public notice and opportunity for a public hearing, promulgate a revised plan (or portion thereof) not later than 3 months after the date required for approval or disapproval.

"(2) Any requirement for a plan revision under paragraph (1) and any plan requirement promulgated by the Administrator under such paragraph shall include reasonable and practicable measures to minimize the effect on the public health of any conversion to which section 119(b) applies."

(b) Subsection (c) of section 110 of the Clean Air Act (42 U.S.C. 1857 C-5) is amended by inserting "(1)"

after "(c)"; by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and by adding the following new paragraph:

"(2) (A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than 6 months after the date of enactment of this paragraph, on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Administrator of the Federal Energy Administration, and the Chairman of the Council on Environmental Quality.

"(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this sub-

section as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any applicable implementation plan submitted by a State on such plan's including a parking surcharge regulation.

"(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

"(D) For purposes of this paragraph, the term 'parking surcharge regulation' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other surcharge on parking spaces, or any other area used for the temporary storage of motor vehicles. The term 'management of parking supply' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations. The term 'preferential bus/carpool lane' shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses and/or carpools."

SEC. 203. MOTOR VEHICLE EMISSIONS.

(a) Section 202(b)(1)(A) of the Clean Air Act is amended by striking out "1975" and inserting in lieu thereof "1977"; and by inserting after "(A)" the following: "The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5)(A) of this subsection for light-duty vehicles and engines manufactured during model year 1975."

(b) Section 202(b)(1)(B) of such Act is amended by striking out "1976" and inserting in lieu thereof "1978"; and by inserting after "(B)" the following: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that emissions of such vehicles and engines may not exceed 2.0 grams per vehicle mile."

(c) Section 202(b)(5)(A) of such Act is amended to read as follows:

"(5)(A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting the suspension for 1 year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within 60 days. If he determines, in accordance with the provisions of this subsection, that such

suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1) (A) of this subsection) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977."

(d) Section 202 (b) (5) (B) of the Clean Air Act is repealed and the following subparagraphs redesignated accordingly.

SEC. 204. CONFORMING AMENDMENTS.

(a) (1) Section 113 (a) (3) of the Clean Air Act is amended by striking out "or" before "112 (c)", by inserting a comma in lieu thereof, and by inserting after "hazardous emissions)" the following: ", or 119 (f) (relating to priorities and certain other requirements)".

(2) Section 113 (b) (3) of such Act is amended by striking out "or 112 (c)" and inserting in lieu thereof ", 112 (c), or 119 (f)".

(3) Section 113 (c) (1) (C) of such Act is amended by striking out "or section 112 (c)" and inserting in lieu thereof ", section 112 (c), or section 119 (f)".

(4) Section 114 (a) of such Act is amended by inserting "119 or" before "303".

(b) Section 116 of the Clean Air Act is amended by inserting "119 (b), (c), and (e)," before "209".

SEC. 205. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT.

(a) Any allocation program provided for in title I of this Act or in the Emergency Petroleum Allocation Act of 1973, shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the country designated by the Administrator of the Environmental Protection Agency as requiring low sulfur to avoid or minimize adverse impact on public health.

(b) In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal to which section 119 of the Clean Air Act applies, the Department of Health, Education, and Welfare shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c) No action taken under this Act shall, for a period of 1 year after initiation of such action, be deemed a major Federal action significantly affecting the quality of the hu-

man environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856). However, before any action under this Act that has a significant impact on the environment is taken, if practicable, or in any event within 60 days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102 (2) (C) of the National Environmental Policy Act, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a 30-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under this Act which will be in effect for more than a 1-year period (other than action taken pursuant to subsection (d) of this section) or any action to extend an action taken under this Act to a total period of more than 1 year shall be subject to the full provisions of the National Environmental Policy Act of 1969 notwithstanding any other provision of this Act.

(d) Notwithstanding subsection (c) of this section, in order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping

to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 (83 Stat. 856) for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

SEC. 206. ENERGY CONSERVATION STUDY.

(a) The Administrator of the Federal Energy Administration shall conduct a study on potential methods of energy conservation and, not later than 6 months after the date of enactment of this Act, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

(1) the energy conservation potential of restricting exports of fuels or energy-intensive products or goods, including an analysis of balance of payments and foreign relations implications of any such restrictions;

(2) federally sponsored incentives for the use of public transit, including the need for authority to require

additional production of buses or other means of public transit and Federal subsidies for the duration of the energy emergency for reduced fares and additional expenses incurred because of increased service;

(3) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource recovery in order to reduce energy demand including the economic costs and fuel consumption tradeoff which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials;

(4) the costs and benefits of electrifying rail lines in the United States with a high density of traffic, including (A) the capital costs of such electrification, the oil fuel economies derived from such electrification, the ability of existing power facilities to supply the additional powerload, and the amount of coal or other fossil fuels required to generate the power required for railroad electrification, and (B) the advantages to the environment of electrification of railroads in terms of reduced fuel consumption and air pollution and disadvantages to the environment from increased use of fossil fuel such as coal; and

(5) means for incentives or disincentives to increase efficiency of industrial use of energy.

(b) Within 90 days of the date of enactment of this Act, the Secretary of Transportation, after consultation with the Federal Energy Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public mass transportation systems and encouraging increased ridership as alternatives to automobile travel.

(c) Such plan shall include, but shall not be limited to—

(1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the provision of expanded mass transportation service in urban areas;

(2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under section 142(a)(2) of title 23, United States Code (the "Federal Aid Highway Act of 1973"), for the purpose of providing additional capacity for and encouraging increased use of public mass transportation systems;

(3) recommendations for a program of demonstration projects to determine the feasibility of fare-free and low-fare urban mass transportation systems, including

reduced rates for elderly and handicapped persons during nonpeak hours of transportation;

(4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;

(5) recommendations on the feasibility of providing tax incentives for persons who use public mass transportation systems.

(d) In consultation with the Federal Energy Administrator, the Secretary of Transportation shall make an investigation and study for the purpose of conserving energy and assuring that the essential fuel needs of the United States will be met by developing a high-speed ground transportation system between the cities of Tijuana in the State of Baja California, Mexico, and Vancouver in the Province of British Columbia, Canada, by way of the cities of Seattle in the State of Washington, Portland in the State of Oregon, and Sacramento, San Francisco, Fresno, Los Angeles, and San Diego in the State of California. In carrying out such investigation and study the Secretary shall consider, but shall not be limited to—

(1) the efficiency of energy utilization and impact on energy resources of such a system, including the future impact of existing transportation systems on energy resources if such a system is not established;

(2) coordination with other studies undertaken on the State and local levels; and

(3) such other matters as he deems appropriate. The Secretary of Transportation shall report the results of the study and investigation pursuant to this Act, together with his recommendations, to the Congress and the President no later than December 31, 1974.

SEC. 207. REPORTS.

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 201 through 205 of this title.

SEC. 208. FUEL ECONOMY STUDY.

Title II of the Clean Air Act is amended by redesignating section 213 as section 214 and by adding the following new section:

"FUEL ECONOMY IMPROVEMENT FROM NEW MOTOR VEHICLES

"SEC. 213. (a) (1) The Administrator and the Secretary of Transportation shall conduct a joint study, and shall report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committees on Public Works and Commerce of the United States Senate within 120 days following the date of enactment of this section, concerning the practicability of estab-

lishing a fuel economy improvement standard of 20 percent for new motor vehicles manufactured during and after model year 1980. Such study and report shall include, but not be limited to, the technological problems of meeting any such standard, including the leadtime involved; the test procedures required to determine compliance; the economic costs associated with such standards, including any beneficial economic impact; the various means of enforcing such standard; the effect on consumption of natural resources, including energy consumed; and the impact of applicable safety and emission standards. In the course of performing such study, the Administrator and the Secretary of Transportation shall utilize the research previously performed in the Department of Transportation, and the Administrator and the Secretary shall consult with the Administrator of the Federal Energy Administration, the Chairman of the Council on Environmental Quality, and the Secretary of the Treasury. The Office of Management and Budget may review such report before its submission to Congress but the Office may not revise the report or delay its submission beyond the date prescribed for its submission and may submit to Congress its comments respecting such report. In connection with such study, the Administrator may utilize the authority provided in section 307 (a) of this Act to obtain necessary information.

"(2) For the purpose of this section, the term 'fuel economy improvement standard' means a requirement of a

percentage increase in the number of miles of transportation provided by a manufacturer's entire annual production of new motor vehicles per unit of fuel consumed, as determined for each manufacturer in accordance with test procedures established by the Administrator pursuant to this Act. Such term shall not include any requirement for any design standard or any other requirement specifying or otherwise limiting the manufacturer's discretion in deciding how to comply with the fuel economy improvement standard by any lawful means."

TITLE III—STUDIES AND REPORTS

SEC. 301. AGENCY STUDIES.

The following studies shall be conducted, with reports on their results submitted to the Congress:

(1) Within 60 days after the date of enactment of this Act:

(A) The Administrator shall conduct a review of all rulings and regulations issued pursuant to the Economic Stabilization Act to determine if such rulings and regulations contributed to or are contributing to the shortage of fuels and of materials associated with the production of energy supplies.

(B) The President shall undertake a comprehensive survey of all Federal departments and agencies to identify and recommend to the Congress specific proposals

to significantly increase energy supply or to reduce energy demand through conservation programs.

(C) All independent regulatory commissions shall undertake a survey of all activities over which they have jurisdiction to identify and recommend to the Congress and to the President specific proposals to significantly increase energy supply or to reduce energy demand through conservation programs.

(D) The Secretary of the Treasury and the Director of the Cost of Living Council shall recommend to the Congress specific incentives to increase energy supply, reduce demand, to encourage private industry and individual persons to subscribe to the goals of this Act. This study shall also include an analysis of the price-elasticity of demand for gasoline.

(E) The Administrator shall report to the Congress concerning the present and prospective impact of energy shortages upon employment. Such report shall contain an assessment of the adequacy of existing programs in meeting the needs of adversely affected workers, together with legislative recommendations appropriate to meet such needs, including revisions in the unemployment insurance laws.

(F) The Secretary of the Interior and the Secretary of Commerce are directed to prepare a comprehen-

sive report of (1) United States exports of petroleum products and other energy sources, and (2) foreign investment in production of petroleum products and other energy sources to determine the consistency or lack thereof of the Nation's trade policy and foreign investment policy with domestic energy conservation efforts. Such report shall include recommendations for legislation.

(2) Within 6 months after the date of enactment of this Act:

(A) The Administrator shall develop and submit to the Congress a plan for providing incentives for the increased use of public transportation and Federal subsidies for maintained or reduced fares and additional expenses incurred because of increased service for the duration of the Act.

(B) The Administrator shall recommend to the Congress actions to be taken regarding the problem of the siting of energy producing facilities.

(C) The Administrator shall conduct a study of the further development of the hydroelectric power resources of the Nation, including an assessment of present and proposed projects already authorized by Congress and the potential of other hydroelectric power resources, including tidal power and geothermal steam.

(D) The Administrator shall prepare and submit to Congress a plan for encouraging the conversion of coal to crude oil and other liquid and gaseous hydrocarbons.

(E) The Secretary of the Interior shall study methods for accelerating leases of energy resources on public lands including oil and gas leasing onshore and offshore, and geothermal energy leasing.

SEC. 302. REPORTS OF THE PRESIDENT TO CONGRESS.

The President shall report to the Congress every sixty days beginning June 1, 1974, on the implementation and administration of this Act and the Emergency Petroleum Allocation Act of 1973, together with an assessment of the results attained thereby. Each report shall include specific information, nationally and by region and State, concerning staffing and other administrative arrangements taken to carry out programs under these Acts and may include such recommendations as he deems necessary for amending or extending the authorities granted in this Act or in the Emergency Petroleum Allocation Act of 1973.

63-518 O - 76 - 34 (Vol. 1)

INTRODUCTORY STATEMENT, MARCH 28, 1974

Mr. Jackson. Mr. President, I introduce for appropriate reference the "Standby Energy Emergency Authority and Contingency Planning Act."

On March 6, the President vetoed the Energy Emergency Act which among many other things, would have required a rollback in oil prices. The President based his veto message primarily on the oil price rollback.

The Senate failed to override the President's veto by a vote of 58 in favor to 40 against on March 6.

Following the veto, Congressman Staggers, chairman of the House Interstate and Foreign Commerce Committee, and I undertook a series of discussions with the administration to ascertain whether agreement could be reached with the administration on the provisions of an Energy Emergency Act the President would support. These negotiations have sought to develop an agreed-upon bill to provide most of the authority contained in the Energy Emergency Act which the President vetoed on March 6.

Discussions were concluded yesterday without a final and comprehensive agreement having been reached. These discussions did, however, demonstrate that there is a consensus within the administration that the executive branch requires standby emergency authority to deal with the prospect of recurring energy shortages.

While concurrence was reached on most aspects of the bill, fundamental differences on a number of major issues of public policy—unemployment compensation, restraints on oil prices, loans to homeowners, disclosure of confidential oil industry data, and protection of distributors and service station dealers—made full agreement with the administration impossible.

The bill passed by the Congress and vetoed by the President had important provisions on each of these subjects, and I could not agree to any bill which deleted or rendered these provisions meaningless.

NEED FOR EMERGENCY AUTHORITIES AND CONTINGENCY PLANNING

Mr. President, expeditious passage of a new bill is necessary because of the major risks the Nation faces in relying upon oil imported from nations whose leaders view and use oil as a political weapon. There are no grounds for confidence that the Arab oil embargo will not be reimposed in the weeks and months ahead as swiftly and with as little notice as it was imposed last fall. We must be prepared for such an eventuality. Indeed, our visible preparedness for and reduced vulnerability to the threat of embargo reduces the probability of imposition of an embargo.

The critical shortages the American people experienced this past winter could well be with us again later this spring and this summer.

The essential social and economic interests of the Nation are dependent upon an assured supply of equitably priced oil. These interests must not be placed in uncertain and unpredictable foreign hands. Reliance and overdependence on insecure sources of high-priced supply is a policy which can only be followed if we are fully prepared to reduce consumption and get by with less petroleum during periods of short supply which others may impose upon us.

Contingency plans and standby authority to deal fairly and equitably with shortages and in a manner which will maintain employment and the economy are essential.

At the present time, there is no authority in Federal law for the implementation in peacetime of programs necessary to deal with acute energy shortages. During this winter's embargo, Federal policy was dependent upon requests for voluntary public action and a very broad interpretation of the Petroleum Allocation Act which, in some respects far exceeded the scope and purpose of that act.

Mr. President, in the future we cannot continue to rely on voluntary exhortations for sacrifice as our only means to deal with shortages. We must act to increase supply. We must have a policy of energy conservation. We must also have at hand contingency plans which can be rapidly and effectively implemented if we are to retain economic and political independence. Standby authority and contingency planning to deal with critical shortages will continue to be essential to maintaining our national security and our freedom of action until we attain the capability for energy self-sufficiency.

The bill I am introducing today accommodates the administration's requests to the fullest extent possible within the context of our negotiations. It is patterned after the bill previously vetoed by the President. Changes in the bill include incorporation of a number of technical changes, deletion of the price rollback provisions contained in the conference report, and conversion of the major provisions of the bill into standby authorities which may be exercised only in periods of critical shortages.

PRICING OF PETROLEUM PRODUCTS

Mr. President, the adverse impact of acute fuel shortages arising from the Arab embargo has been a highly visible national problem which has touched nearly every citizen. The lifting of the embargo offers a tenuous and uncertain prospect of reducing the shortfall between supply and demand. What will not be reduced, however, are the extraordinary price levels attained by petroleum and petroleum products. What is not affected is the potential for comparable increases in the near future. Less apparent than a line at a gas station, but equally damaging to the Nation's well being, is the erosion of the family budget and the stimulus to accelerated nationwide inflation which will result from the unchecked upward movement of petroleum prices. For that reason, responsible legislation which authorizes responses to critical energy shortages must also authorize responses to equally critical energy price increases.

In the past 6 months, the Wholesale Price Index for crude oil and refined petroleum products has risen by over 50 percent. Fuel price increases represented 27 percent of the total increase in the cost of living during the past year. As startling as these figures may be, they

nonetheless are considerably lower than those increases which would have occurred had price controls been nonexistent.

Now, however, the Senate Banking and Currency Committee has found it inadvisable to extend these price controls on the grounds that a free market can more efficiently set prices. It is an appealing argument, particularly in view of our experience with most price controls as employed by this administration.

However, for so long as the international oil market remains a politicized cartel there is no free market. For so long as the policy of the OPEC cartel is a world price determinant, there is no free market. For so long as the volume of oil available to U.S. oil companies is dependent upon the policy of the internationals, there is no free market. For so long as domestic production is restrained by shortages of drilling rigs, pipe, and pumps, there is no free market.

Consequently, until such time as domestic self-sufficiency is attained through increased production and a reduction in demand growth, we cannot rely upon the market place to function effectively to regulate supply, demand, and prices. For that reason, it is imperative that public policy provide for: First, an accelerated effort to increase domestic energy supplies; second, a continuing program to further energy conservation; third, the employment of price regulation when necessary to prevent unacceptable inflationary pressures on the national economy and intolerable energy prices for the consumer.

Already, Mr. Simon is predicting gasoline prices as high as 80 cents per gallon in the next few months. Thus, in less than a year, consumers face a doubling of petroleum costs; yet, they can still expect to experience inadequate supplies.

Clearly, this is an outrageous situation. It is one thing to pay high prices in return for unlimited energy. It is another to pay the same exorbitant prices and to remain energy deficient.

Within the past year, gasoline costs to consumers have risen three times, and fuel oil six times as fast as the costs of all other goods and services. It is imperative, therefore, that some kind of price control authority for petroleum be continued for the near future. It is particularly necessary in the light of current administration policy which has effectively nullified past conservation efforts and increased supplies of gasoline at the service station only by dipping into inventories. Such a policy will inevitably increase consumption while supplies are still limited, and thus unnecessarily drive up prices.

The rationale announced by the administration for their policies is that exorbitant prices will reduce demand. We have recently seen the cruel results of such policies in the case of propane, when rural low-income and retired persons were forced to spend as much as 75 percent of their incomes on propane fuel and were consequently faced with a choice between hunger and cold. We cannot tolerate the extension of this experience throughout the industrial and consumer sectors of our economy, which are so dependent on petroleum.

It is absolutely necessary, therefore, that the President's existing authority for petroleum price controls be exercised by the President as soon as possible and that he employ that authority when the public welfare requires it. For this reason, such a provision is included in the bill I introduce today. **[Sec. 128.]**

The President, in his veto message, asserted that the price rollback required in the conference report would undermine incentives to develop new domestic energy resources. For reasons I set out at length during the Senate's debate on this legislation, I do not accept the administration argument.

The new bill, however, does go a long way toward accommodation with the administration. It does not require a rollback of prices to any specified level, but it does reiterate the intention of Congress, stated unambiguously in the Emergency Petroleum Allocation Act, that the President control the prices of crude oil and petroleum products. This legislation allows the President broad latitude in determining specific ceilings but it requires him to support any price ceiling or change in a price ceiling with a detailed analysis of the impact of prices upon supply and demand, upon consumers and upon employment.

The legislation I am introducing also ends the exemption from regulation of that 14 percent of domestic oil which is produced from stripper wells. This exemption was twice voted by Congress in the mistaken anticipation that it would provide a price incentive for stripper wells of perhaps 50 cents or a dollar per barrel. Since the exemption was enacted last fall, the average price of such crude oil has, however, risen from $4.25 to $10.35 per barrel. Spokesmen for the administration have repeatedly requested an end to the stripper well exemption, and I am happy to accommodate them on this matter.

The bill also provides specific relief for consumers who have been victimized by increases in propane prices, wholly out of proportion to the increase in raw-material costs. It makes absolutely clear the intention of Congress that all raw materials for propane, whether produced from oil wells, gas wells, or refineries, be price controlled, and that price passthroughs be allocated among the various products of petroleum according to their historical price relationships.

Mr. President, testimony before the Subcommittee on Multinational Corporations of the Foreign Relations Committee has revealed that the multinational oil companies are making unbelievable windfall profits on their overseas producing operations. Aramco, a wholly owned affiliate of four U.S. majors, is now recording net profits of $4.50 per barrel. These incredible profits are not only passed on to American consumers in the form of price increases for imported oil, which the administration has exempted from price controls, but, through the depletion allowance and the foreign tax credit, they produce an additional tax windfall for the companies at the expense of the U.S. Treasury.

The bill I am introducing today will limit domestic price passthroughs on oil imported by the multinationals to the increases resulting directly from higher taxes and royalties paid to foreigners, less whatever reduction in U.S. tax liabilities might result from the higher base for depletion and foreign tax credits. No such passthrough limitation, however, is imposed on imports of oil from nonaffiliates, so that this requirement will not undermine the competitive position of independent refiners and marketers who must obtain their oil in world markets at arms-length.

ADMINISTRATION TESTIMONY, HOUSE HEARINGS

STANDBY ENERGY EMERGENCY AUTHORITIES ACT

TUESDAY, APRIL 2, 1974

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Today we begin again consideration of legislation designed to equip the Executive with emergency powers to deal more effectively with critical shortages in energy supplies. I was, of course, disappointed that the President vetoed the Energy Emergency Act upon which the Congress had labored so hard. I found it difficult to understand why the President would voluntarily deny himself the tools contained in that legislation needed to respond to the American people's call for action simply because he disagreed with some parts of the bill.

The legislative process necessitates compromise. We in the Congress had endeavored to work with the President and his advisers to find a middle ground. And I firmly believe that the legislation which the Congress had sent to the President for his signature was fundamentally sound.

Nevertheless over the last several weeks I have renewed efforts to refine the legislation and to modify its terms so as to avoid yet a second Presidential veto—a result which would surely further erode confidence in our governmental institutions.

There are many who have urged me to abandon this effort, arguing that the crisis is over and that legislative action of this scope is not called for. I disagree. Embargos once lifted can be reimposed. Gas lines can reappear this summer as suddenly as they did last fall. I am convinced that there remains a real need to provide the President with standby authority to respond positively to any developing crisis.

The bill before us today, H.R. 13834, represents a change from the vetoed bill in several respects. Most significantly, the highly controversial price rollback provisions have been eliminated, and it is my intention to bring before this committee separate legislation addressing this problem.

Title II of the bill containing proposed amendments to the Clean Air Act is identical to that which emerged from conference and was contained in the vetoed bill. This morning's testimony will be

directed primarily to its terms and to the provisions of title I providing for the conversion of major fuel-burning installations to the use of coal.

* * * * * * *

We are pleased to welcome the Hon. Russell E. Train, Administrator of the Environmental Protection Agency.

Mr. Train, we are glad to have you with us. If you would identify those who are with you for the record we would begin.

STATEMENT OF HON. RUSSELL E. TRAIN, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY ROGER STRELOW, ACTING ASSISTANT ADMINISTRATOR FOR AIR AND WATER PROGRAMS; ERIC STORK, DEPUTY ASSISTANT ADMINISTRATOR FOR MOBILE SOURCE AIR POLLUTION CONTROL; AND MICHAEL LERNER, DIRECTOR OF THE OFFICE OF POLICY ANALYSIS, OFFICE OF AIR AND WATER PROGRAMS

Mr. TRAIN. Thank you, Mr. Chairman.

Mr. Roger Strelow, on my right, who is the Acting Assistant Administrator for air and water programs. On my life, Mr. Eric Stork, who is the Deputy Assistant Administrator for Mobile Source Pollution. On my far right, Mr. Michael Lerner, Director of the Office of Policy Analysis in the office of air and water programs.

I think that we have here at the table expertise that can address the coal conversion problems and answer any questions which the committee may have to ask.

I do not have, Mr. Chairman, a prepared statement as I mentioned to you. I do appreciate this opportunity to appear and make some brief opening remarks and be available to assist the committee in any way that it wishes.

Your invitation, as you know, only arrived yesterday, so I do not have as I said a prepared statement. I do have some notes which I will refer to.

Of course, I am generally familiar with the provisions of H.R. 13834 at least in terms of the Clean Air Act, and I think that I

better address myself to those aspects of the bill as the rest are outside of my own particular areas of responsibility.

I think I could mentioned just by way of context a fact which the committee is well aware of, and that is that on March 22 I transmitted from EPA to both the House and the Senate a group of amendments to the Clean Air Act. Now at least two of those, as I will mention a little later, do cover essentially the same ground as provisions in H.R. 13834, specifically the coal conversion provision, and the auto emission provisions.

The other amendments contained in the Clean Air Act proposals of March 22 do not relate specifically to the energy emergency legislation, either that previously considered or this bill now before the committee. If I may respectfully suggest, these other amendments dealing with such matters as the need for greater flexibility under transportation control plans are all matters which we hope this committee, through its subcommittee, will address at an early date, but we do feel that they would best be handled outside of the context of the energy emergency legislation.

With respect to the coal conversion provision, H.R. 13834, under the bill sources would be permitted to convert and to increase emissions as a result up to January 1, 1975, to a point where they would not materially contribute to a significant risk to public health. That was the language in the previous bill.

I would like to call the attention of the committee to the fact that the amendment on this subject which the administration through EPA transmitted on March 22 makes a change in that respect and inserts primary standards to that in the case of a converted plant there could not be in any event a violation of primary standards, and those of course are the health related standards. This is an agreed position within the administration, obviously one which EPA urged upon the administration.

I would not say that the language "significant risk to public health" opens any wide door in the act. I think our problem is we don't quite know what standard that is. It is a new concept. It is neither a primary standard nor a secondary standard and does inject an ambiguity and an uncertainty.

I think we would have to assume that it is a somewhat more lenient provision than what we are suggesting in terms of no violation of primary standard. So we would urge upon the committee, recognizing its desire, of course, to move as rapidly as it can with this legislation, that it consider seriously this proposed change that the administration has transmitted.

I might also point out that there in the coal conversion provision some other mostly quite minor differences in the administration language which we recently transmitted as compared to H.R. 13834. One of these, for example, is to use the date January 1, 1980, instead of 1979 as the date by which a converted source must reach full compliance with State emission limitations. That is one difference.

I simply would at this point on behalf of the administration urge the committee to give careful consideration to these differences which again I would say, although relatively minor in most cases, are important.

In one other area with respect to auto emission standards, the committee I think is well aware of the fact that the proposals in this regard made by the President first in his energy message of some weeks ago which we transmitted again on March 22 to the Congress does involve some differences with the provisions of the pending bill. Again on behalf of the administration I would urge the committee to give careful and thorough consideration to the administration's proposals in this regard.

Mr. Chairman, I think it might be best to get to questions. That would conclude my unprepared opening remarks. I think that covers essentially the significant title II provisions as they related to the Clean Air Act.

The CHAIRMAN. Mr. Train, we do appreciate your coming and bringing with you your advisors. The differences are very minor between this bill and the bill proposed by the President. We have very few changes in the bill itself from what it was originally, and this section was not changed after considerable hearings by the two committees in the Senate and by our committee here. So we will take under consideration those changes which you have suggested.

Any questions on this side?

Anyone over here?

Mr. NELSEN. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. NELSEN. I would just like to comment relative to the appearance of our witness today that I think none of the members of this committee want to delay attention to the environmental problem and many of us have been involved in this field for years. But I think there needs to be some more cooperation between various interests to try to achieve some of these things that we know we must achieve. For example, in the power field, I ran the rural electrification program under the Eisenhower administration, and we now find that some of our powerplants out there in the wide open spaces, far away from population centers, have been forced to move to install scrubbing equipment where the ambient air quality is very good and the cost has been so excessive. For example, Colorado used about $16 million for stack emission control for a $26 million plant. Really, I believe that at this time, where the ambient air quality remains good, there can be some relaxation until we are able to find better answers.

Now I wondered, is there any area that you would suggest? I think there might be areas in research and better uses of coal. I think that the methods of cleaning up the use of coal for stack emissions has not been properly researched. There might be some areas where we as the Congress could spend more money to make it possible for us to get our coal supply and do a better job of research to get better stack emissions. Do you have any view on that?

Mr. TRAIN. I fully agree with your belief in the importance of this area, Mr. Nelson. I have testified on many occasions over the years as a matter of fact, but I suppose very often most recently to the need for more R. & D. effort on the part of Government as well

as industry to enable us to more effectively use our abundant coal resources.

Now in EPA, of course, we have had an on-going responsibility and program with respect to flue gas desulfurization technology development and stack scrubbers and related technologies. We have, I think, successfully demonstrated as many as six or more different technologies in this area. I think here is a field in which we should continue to press technological development.

We believe that the technology today is sufficiently reliable and available to warrant installation in a great many cases, and certainly to warrant far more commitment on the part of industry, the power industry particularly, than it has given to date with some notable exceptions.

But having said that, I do think that it would be appropriate to continue a high level—in fact increase the level of Federal effort in this regard. The EPA budget for fiscal year 1975 does contain an additional $165 million approximately for more energy R. & D. as it relates to environmental matters. About $105 million of that is for control technology, and much of that will relate to coal emissions, so that I feel that there is a very important effort, and I think that it certainly deserves the full support of this committee, which I know it will have.

Mr. Nelsen. The other point is that all of us have worried over the energy crisis that we have gone through, and if the United States is ever going to be independent of the Middle East supply, or the world supply, we are going to have to develop our own resources or we are going to have an economic problem that is going to be disastrous. So we have the largest coal supply in the world, and we have done very little in my judgment to do a better job of land fill and restoring areas where strip mining has been used. We have done too little in the area of researching how we could better use coal.

At the same time, all of us must admit now that we are going to have to do it, and to find better ways of plant location away from population centers and all of this. I want to compliment you, Mr. Train, on the fine job that you have done, because we pass laws, and we ask administrators to enforce them and handle them as we pass them, and then sometimes criticise them for doing the job that we have asked them to do in the act itself.

I want to say that we are in agreement that our goal is the same and that if we can get various groups together to communicate and realize the problems we face and eliminate the possibility of issues being built rather than answers found, I think we can work it out. I intend to introduce the administration bill. That does not mean I would not change some parts of it, and we will counsel with your Agency. I just want to pledge my support to our good chairman who is also interested in this particular phase of the bill.

Thank you, Mr. Chairman.

The Chairman. Any questions on this side?

Mr. Moss. Yes.

The Chairman. The gentleman from California.

Mr. Moss. First I want to express my apologies for being late and missing the initial testimony before the committee. I might ex-

plain that I was late because I was in discussion with the representative of the California Air Resources Board in my office, having followed by a day discussions with the representative of the Air Pollution Control Region in Los Angeles County, which is rather far removed from my own district, mine being the Sacramento area.

The State indicated that you feel that in some of the plans that we now have that there should be extended time periods in achieving certain of the standards, is that correct?

Mr. Train. Yes, sir, that is correct. We need more flexibility is the way we express it.

Mr. Moss. More flexibility.

Now we do have in this legislation two items, one dealing with the transportation controls and the surcharges which reflect again I suppose to a large extent the concern of California because of the imposition of standards which would reduce the total number of vehicle miles traveled to levels which are generally felt to be unattainable. Would you concur that that is indeed the case?

Mr. Train. Yes, at least within any kind of realistic time frame or without unreasonable social and economic disruption.

Mr. Moss. It would indeed require in some instances substantial restructuring of freeway systems, and I am told from an engineering standpoint that it presents almost insurmountable problems.

Mr. Train. Well, I am speaking now from memory, Mr. Moss, but it seems to me that in the Los Angeles Basin we estimate at least the reduction of vehicle miles traveled something in the neighborhood of 85 percent would be required over and above every other kind of control effort that you would make, and this is obviously an unrealistic and unattainable goal within any kind of time frame that I can see before us at the moment.

The only alternative to private transportation, automobile transportation, is mass transit, and there is no way to install a basin-wide mass transit system fully operated by 1975 or indeed 1977. So I think we are simply facing a confrontation when both sides agree that the requirement is substantially impractical as it now stands, and I think that the sooner we face this fact directly and honestly and get on with getting some more flexibility to the statute in this respect which can be applied on a case-by-case basis, not across the board—I think some people have read the administration's proposal as an invitation to towns and communities all across the country to give way on their air pollution control efforts, and this is absolutely not intended and would be a great mistake. We are only talking about a relatively few cities such as Los Angeles and only with respect to their transportation.

Mr. Moss. I believe that in my own city the required reduction or the target reduction is about 80 percent.

Mr. Train. It is of that magnitude. It is very high.

Mr. Moss. Would you concur in the view that if we had immediately available adequate funds for a mass transit system that we could not, if orders were placed yesterday, achieve that level of reduction?

Mr. Train. If I understand your question correctly, that is right.

Mr. Moss. Now let me understand. I believe that I am correct

that there is a different standard being imposed for the next few years upon the State of California and the Nation as a whole.

Mr. TRAIN. California has a separate State set of standards which the Federal law recognizes.

Mr. MOSS. Yes. I believe that I on this side, and former Senator Murphy on the other side, were the sponsors of those which permitted California in effect to adopt a State standard which exceeded the Federal standard.

Mr. TRAIN. That is correct, sir.

Mr. MOSS. What we are talking about though here is a required Federal standard which appears to excede the national standard. Am I correct on that?

Mr. TRAIN. I don't think I really understand your question, Mr. Moss.

Mr. MOSS. Well, you are requiring that for the next model year that equipment be required on automobiles in California different than that required nationally, am I correct?

Mr. TRAIN. No, I don't believe that is correct.

Mr. MOSS. You do not believe that is correct?

Mr. TRAIN. No, sir. We do have a nationwide interim standard set which will go into effect for the 1975 model year, but that does not affect the State of California's own emission system.

Mr. MOSS. I raise the question because in the rather hurried conference this morning that was a point that was raised and I wanted to have clarification on it.

Do you have any kind of additional proposal which would in this pending piece of legislation more adequately deal with the need for flexibility than the language now in the legislation?

Mr. TRAIN. I did not address these points in my brief opening remarks.

The only language in the pending bill which is carried over from the previous energy emergency legislation dealing with the transportation control plans—speaking again from memory—is the prohibition of a parking surcharge without expressed congressional approval, deferral of parking management plans generally until January 1, 1975, and a study to be undertaken by the Environmental Protection Agency by—it was May 1 in the previous bill—I am not sure. Six months from the date of enactment in this bill.

I think as you know, following the passage of the prior legislation containing these provisions and subsequent to the veto I took the necessary regulatory steps to put those provisions into effect, and I canceled out the parking surcharge provisions in promulgated plans and I deferred all parking management control items in those plans as well until next January. We do have the study underway, and I think it will be ready by the 1st of June, so that we have made a full effort to carry out the very clear intent of Congress as I saw it even though the legislation did not become law.

So at this point actually I don't know that it is moot insofar as we are concerned. We have already carried out these provisions. These are the only elements of the bill that touch on the transportation control plans. As I said, at the beginning of my opening remarks, the elements of the recent Clean Air Act amendments which

have not related directly to the emergency legislation such as the need for greater flexibility and the transportation plans generally I feel quite strongly could best be addressed by the committee outside of the context of the energy emergency legislation.

Mr. Moss. Then for the purpose of this legislation you feel the need for language now in the draft bill is ended?

Mr. Train. Yes, sir.

Mr. Moss. Thank you.

Mr. Train. I would suppose in the first instance I would have opposed including these provisions in the bill if I had been asked last fall on the parking surcharge just simply to protect EPA's regulatory authority. I have already taken these steps, so I don't think it is an issue between us.

Mr. Moss. I want to compliment you as the culprit proposing the amendment in the language. I did not intend to do anything which does not meet the needs of the people I represent, the public in California.

The Chairman. The gentleman from Kentucky.

Mr. Carter. Mr. Chairman, I just wanted to transfer the word which the mayor of the city of Miami gave the subcommittee the other day. It was extremely complimentary of Judge Train's assistance to and his cooperation with the city of Atlanta. I thought he might like to know that.

Thank you, Mr. Chairman.

The Chairman. Any further comments?

Mr. Rogers. Mr. Train, I think it might be well to have on record your thinking on an amendment that was proposed in the previous legislation and may again be proposed. It is known as the Wyman Amendment, with which I think you are probably familiar. I wonder if you would give us any comments on that?

Mr. Train. I am glad you have asked that question, Mr. Rogers, because the Agency does have in fact, and I have very strong views on the Wyman Amendment. I think that speaking very broadly the effect of the amendment would really be disastrous for the whole order of emissions control programs. Now let me be a little more specific in stating why I feel that strongly.

The bill—and I have a copy of it with me—would designate by statute some 13 metropolitan areas which would be regulated so to speak and persons residing outside of those designated areas would have automobiles without emission control. So we are talking about a two car system as far as the manufacturers and dealers are concerned.

Our own data show that if we did not have auto emission controls some 66 cities in the country would violate the health standards—not 13, 66.

So taking the proposal as it is written in the bill—and I am referring to H.R. 12687—and accepting the list, which by the way EPA would not be allowed to vary except with the consent of Congress—but accepting that list would obviously mean that the great many metropolitan areas of the country which would be unregulated under the bill would be violating health standards. Texas, for example, is included—Fairbanks, Alaska is not included in the

list—as the city I believe as I recall that has the highest levels of carbon monoxide in any State of the United States.

Mr. Rogers. May I ask that you place in the record a list of those cities?

Mr. Train. I would be very happy to do so.

[See letter dated April 3, 1974, p. 125, this hearing.]

Mr. Train. Let me also point out that those 66 cities that would be violating health standards comprise some 85 percent of the population of the United States.

I might also point out, Mr. Moss, particularly because of your concern for California, that the bill has a preemption provision in it and would prohibit any State from establishing an emission control system outside of the specified regulated areas. At the present time California has a single set of standards that apply statewide, not just to Los Angeles or Sacramento or San Francisco or San Diego and so forth, but the whole State because of their recognition of the impracticality of enforcing any system which has different rules as you moved geographically.

The 85 percent of the Nation's population that would be involved here I think conveys very dramatically the basic error in the bill. The bill is presented as only requiring auto emission controls for the relatively few parts of the country where the air is dirty. The fact is that the air is dirty very widely across the United States, so there is that health aspect.

We would be really doing a very major disservice in terms of public health to adopt the bill.

With respect to fuel economy, the bill is also proposed in part as a step toward improving auto gas mileage. We all recognize that emission controls at the present time do adversely affect gasoline mileage. Let me adjust parenthetically that we have every reason to believe that this picture will improve with respect to the 1975 models, but aside from that the bill would authorize or at least prevent us from imposing any penalty for the decontrol of existing generations of cars, a two-tier system for new cars and authorized decontrol for old cars.

The 1972 and back cars have a relatively small gas penalty at the present time from emission control because of the fairly low level of control. I think that the mileage penalties are around 5 percent for those earlier cars. As I have testified previously before this committee, the 1973–74 generation of cars do represent a fuel penalty on a sales weighted average of somewhere about 10 percent. This actually goes up considerably higher to around 18 percent with the bigger cars, and actually goes the other way and there is a fuel benefit probably for other reasons in the smaller cars.

Our experience with decontrol of emission devices utilizing commercially advertising decontrol shops has produced on the average a 3.5 percent penalty. Even when the people in the shops knew they were working on an EPA car, though they were trying to do the best they could.

I point this out because I think it is really a delusion for the American people to think that there is a way to suddenly remove all of the fuel inefficiency in the existing generation of automobiles.

The only thing that they are bound to get is a 100 percent increase or drastic increase in emissions. It is highly unlikely that they will get any improvement in mileage performance.

It is possible with expert technicians to get on the average around a 7 percent improvement. This is with the automobile manufacturers turning out what they call a cookbook, very carefully designed set of instructions that mechanics can follow. To do that, that would obviously be available everywhere in the country, and you can bet your bottom dollar that people living in the regulated cities where they are supposed to maintain emission controls would also retire to their garage and use the cookbook and in many cases remove the controls and probably begin getting worse mileage, but in any event having the satisfaction of getting around the law in that respect, and we all enjoy doing that.

So I think from the health standpoint this is going to be very adverse for the country. From the standpoint of fuel economy it is entirely illusory. There are many other problems I think for manufacturers who maintain this dual market system. It is going to be exceedingly difficult. Our indication is from some of the manufacturers it may even be impossible without enormous additional costs.

The same kind of even better energy savings on automobiles and greater efficiency can be attained by simple tune-up of the car, and we can encourage everybody in the country to try to have their cars tuned up periodically, and they would achieve about a 6 percent gas mileage improvement on the average.

With the movement to smaller cars that is already underway, and as far as the market preference in the country is concerned, we are going to be seeing a far greater improvement generally in gas mileage and fuel economy than anything that could be achieved by this proposal which again I assign if enacted would substantially undo everything we are trying to do by way of the Clean Air Act in regard to auto emissions.

Mr. Rogers. Mr. Chairman.

Mr. Train. I add one more point. It is not temporary. It is described as a temporary suspension but it would continue so long as the President, I believe, determines that there is a significant shortage of petroleum fuels. I think undoubtedly we are going to have the chronic problem for this country for the foreseeable future.

Mr. Rogers. Mr. Chairman, there are some questions that Mr. Symington would like to have answered for the record if this is psrmissible.

The Chairman. Do you want to present them?

Mr. Rogers. Just give them to Mr. Train.

[The answers to Mr. Symington's questions were not available to the committee at the time of printing—July 1974.]

Mr. Rogers. I think Mr. Carney was concerned with whether you could explain why, if the devices are taken off, there still would not be any great savings.

Mr. Train. I think at this point that I better turn the question over to someone who really knows something about this subject. Mr. Eric Stork.

Mr. STORK. Mr. Rogers, first of all it is very common that everybody talks about emission control devices but in many, many cases it is not a question of devices. Emission control is designed right into most modern cars and although there are a few devices involved in some cases it is not just a simple question of taking such devices off. It is a question of in part changing the calibration of the vehicle. Some of those calibrations can't be changed, some can be. It is also theoretically a question of redesigning the engine or the carburetor which is simply impractical in the field.

The real problem that people face in trying to take emission controls out of cars is that it is a very, very difficult thing to do. All of us have had problems I am sure in getting our car fixed even in dealerships where the mechanics use the cookbook that Mr. Train referred to. To hope that people will do this successfully is illusory.

Mr. Train mentioned an outfit that advertises that it specializes in taking off emission controls. This was the Wrench Pit in Detroit. We gave them two cars in our test program. They knew that they were working on EPA cars. They should not have known that. It was an error on the part of our technician. I was pretty mad when I found out about it. But even this outfit that knew it was working on an EPA car does not know how to take the emission controls off so as to improve even fuel economy. Really these are hot rodders.

When I was young I knew how to get more power out. But that takes more fuel. So it is a very, very difficult thing to redesign a car, Mr. Rogers.

The CHAIRMAN. Any questions on this side?

Mr. Shoup.

Mr. SHOUP. Thank you, Mr. Chairman.

Mr. Administrator, did I understand you correctly to say that in speaking to section 201 of the bill before us on suspension authority that you are recommending that there be a limit to your authority to suspend stationary emission standards to primary standards?

Mr. TRAIN. Yes, sir, That language should be before the committee because of the earlier transmittal on March 22 of the administration's proposal.

Mr. SHOUP. Thank you.

Now last fall, I believe you indicated there were about 26 powerplants in the Nation that could convert from petroleum to coal. Now do I understand that you are basing that statement on authority granted under the energy bill which was vetoed.

Mr. TRAIN. Let me expand upon that a bit. We estimated last fall that there were about 46 plants which had the capability of converting to coal and that of that number some 6 could be converted without significant environmental harm. We have——

Mr. SHOUP. May I interrupt just a moment?

Mr. TRAIN. Yes, sir.

Mr. SHOUP. They would not violate the primary standards.

Mr. TRAIN. I believe that is right.

Mr. SHOUP. Thank you.

Mr. TRAIN. That was rather a rough estimate at that time. We have been actually modeling these plants since then in a much

more refined way. I think we feel that the list of 46 should be a fairly considerably larger list—60–some probably. Some of the plants we felt that could convert we have since discovered really should not on the basis of more carefully remodeling, so with more refined efforts we are improving that list. I would say probably something more than 26 could convert, and I believe without interfering with primary standards.

Mr. Shoup. Do you have any figures on that? You say more than 26. That could be 27 or many more.

Mr. Train. I think it best to say that I cannot give you a figure. Now the analyses are still under way. It is probably something greater than 26, but how much greater I am just not sure.

Mr. Shoup. Do you consider that the 26 that could convert, would that make a significant impact on the conservation of fuel oil?

Mr. Train. Mr. Lerner will address that question.

Mr. Lerner. The 26 original plants would have saved if they all converted about 200,000 barrels of heavy fuel oil per day, which is a very large number. Consumption this winter was about 3 million barrels a day. Actually 11 units on that list of 26 were converted during the winter and were burning coal and saving about 50 to 60 thousand barrels of oil a day during the winter period.

Mr. Shoup. Mr. Administrator, those 11 were allowed to convert through your ability to grant exemptions?

Mr. Train. Yes, sir.

Mr. Shoup. But they did not violate the primary standards?

Mr. Train. I think most of them did not. Primary standards don't have to be met as you know until 1975 or 1977, depending upon the State implementation plan, so there was no prohibition against granting a variance that might lead to emissions in violation of a later primary standard.

Mr. Shoup. But if this bill were enacted with your suggested amendment they would be prohibited?

Mr. Train. Not up to the date set by existing law for the 1975 and with the extensions 1977. During that period even under the proposals which I have mentioned we would still be able to grant variances under the existing Clean Air Act provisions which conceivably might violate primary standards.

Mr. Shoup. Moving from the powerplant consideration to other industries converting from the use of petroleum to coal, have you a study on that? Do you know what effect this would have? Would it be significant?

Mr. Lerner. We are working with the Federal Energy Office now to look at some industrial units in the Middle West which have in the past converted from coal to oil, but we are just in the process of identifying how many units there are and whether they can convert at all.

Mr. Shoup. Did you have any applications for conversion from petroleum to coal?

Mr. Lerner. I think we have just had one on the east coast which I think is a steel plant or something like that, but it was very recent.

Mr. Shoup. There has been no action?

Mr. LERNER. No. I don't believe the State has acted as yet, but there were none during the winter, only the electric utilities.

Mr. SHOUP. Thank you, Mr. Chairman.

The CHAIRMAN. Any further questions on this side?

The gentleman from California.

Mr. VAN DEERLIN. Mr. Train, in response to questions by Mr. Moss I believe you said that Californians were not going to be treated any differently from the rest of the country under present plans having to do with control of auto emissions. Well, let me—the shaking of the head does not show on the record.

Mr. TRAIN. I was waiting for you to finish.

Mr. VAN DEERLIN. I would like to have some discussion of plans for requiring the so-called catalyst converter on automobiles sold in California. The feeling of the Los Angeles County Air Pollution District—which I do not represent directly, being from San Diego—is that they will result in a cost of about $300 per car in California—and that 20 million Californians are becoming 20 million guinea pigs for the auto industry.

Now, having made such an outrageous statement as that, I will pause for comment.

Mr. TRAIN. Let me ask Mr. Stork to comment on that.

Mr. STORK. Mr. Van Deerlin, there is no requirement as such either in Federal law or in the regulations imposed by the California Air Resources Board to put any particular device on a car. In both cases the Federal Government and CARB established performance standards.

Now it is true that California under authority of section 209 of the Clean Air Act has requested and has received waiver of Federal preemption.

Mr. VAN DEERLIN. Very properly so.

Mr. STORK. The more stringent standards that California will impose for the 1975 model year will probably increase somewhat the percentage of vehicles equipped with catalysts from the percentage of cars equipped with catalysts nationwide. However, even under the Federal interim standards which could probably be met for most cars without the use of catalysts, the automakers are planning to use catalysts on a very large fraction of their cars sold in the other 49 States, substantially larger than 50 percent. The current estimate is around 70 percent. Therefore, the cost of cars should not be materially different in California than it would be from the United States, only in those few cases where a manufacturer may use a catalyst on a given model car in California and not in the other 49 States is there any reason for there to be a different cost, and there will not be very many cases of that type, sir.

Mr. VAN DEERLIN. Would you agree that the solution of the emissions problem eventually depends on technological improvements that will involve other than treating the emissions as they come out of the exhaust, and must go deeper into engine design?

Mr. STORK. Well, I would agree, sir; that further technological development may indeed show techniques, different kinds of engines that are more effective than today's so-called conventional internal combustion engine controlled with the catalyst.

But, sir, it takes a long, long time to develop and prove out a new engine. The so-called internal combustion engine has a 60–, 70–year history; it is a very good engine and controlled with a catalyst it is going to be able to provide about as good fuel economy as it can without a catalyst. So while we ourselves are doing a good deal of work to explore other engines and are doing all that we can to encourage the automobile industry to continue their work in looking at other engines, we are in no sense saying that catalyst conventional equipment will not be very good.

To sum this up, sir, what will happen over the long term will really depend on whether the auto industry can come up with something better, and it is not yet clear that they can come up with something better, but we think they should keep trying, and we also are trying.

Mr. STUCKEY. Would the gentleman yield for a short question?

Mr. VAN DEERLIN. Of course.

Mr. STUCKEY. Are you saying that you favor emission standards provided here, that they be extended for a year with the possibility of a second year? Is that correct?

Mr. TRAIN. We certainly favor the 1975 interim standards going into effect which have been set by EPA, actually by regulatory action last spring, a year ago. The issue is what to do with 1976 and 1977. The administration has proposed a 2–year freeze essentially of the 1975 interim standards into 1976 and 1977. The committee in this bill previously had approved in the energy emergency legislation essentially the same except in the second year it left the discretion in the Administrator to grant the extension or set an interim standard. This was the major difference.

Mr. STUCKEY. Mr. Train, I understand what that does. The question is do you favor this.

Mr. TRAIN. Yes, sir; we have supported the administration proposal. As this committee knows, at an earlier date I had proposed and suppported simply going to the 1975 interim standard and then taking a look somewhat later on when we had more information before us, but the President has proposed the 2–year freeze in his energy legislation, and we have transmitted that in the EPA package as a result.

Mr. STUCKEY. And you do support it as it is through 1976–77?

Mr. TRAIN. I do support it.

Mr. VAN DEERLIN. Mr. Train, I have a question that calls for a subjective answer.

What kind of grade would you give the auto industry for effort in this whole field? Not over the last 60 years, or 70 years to which your associate has referred, but say, since the passage of the Clean Air Act amendments of 1967. Would you give them E for effort, or——

Mr. TRAIN. I don't know if I know how to answer that question, Congressman. I am not normally bashful about answering difficult questions, but if that is a very subjective thing I certainly think they could have done more. I assume they could have done more. I know very little about technology so it is hard for me to be a judge. They obviously have stepped up their efforts since the pas-

sage of the Clean Air Act. I think that the deadlines contained in the act and the statutory standards have been forcing the state of the art, and I think this has been excellent. I think it has put real pressure on the indutry. I think the industry has responded to that pressure, and there has been a considerable technological progress made in the control of auto emissions as a result of the requirements of the Clean Air Act which I am quite satisfied would not otherwise have come about.

Mr. VAN DEERLIN. And you would favor keeping their feet to the fire, would you not?

Mr. TRAIN. Absolutely. I think in fact it is desirable to have a little warming up permissibly.

The CHAIRMAN. The gentleman on this side, Mr. Goldwater from California.

Mr. GOLDWATER. Mr. Train, in response to a question you said the provisions in this bill that we are considering dealing with parking surcharge and working management is moot. I wonder if you could elaborate more on that statement?

Mr. TRAIN. Well, moot may not be technically the right phrase. What I was trying to say is that EPA has carried out just as if the bill had become law those particular provisions and we have intension of reversing our administrative position on this, so that I think the committee can feel secure that that is the policy that we are implementing.

This does not provide an answer as to any possible concerns that members may have over parking management plans beyond January 1, 1975. We are working and thinking increasingly closely with communities and particularly in California to develop with communities alternative strategies. This has been underway now this spring and I am hopeful that alternative strategies can be developed with the full support and indeed the initiative of the communities themselves that will obviate parking controls where these seem to be highly unpopular, but I think we will have to wait a bit and see. I think there may be cases where parking controls to some extent are desirable.

Mr. GOLDWATER. You also said that you are conducting a study on this issue?

Mr. TRAIN. On the parking surcharges. I believe it is limited to that.

Mr. GOLDWATER. Why would you not be interested in the effect of parking management?

Mr. TRAIN. I may have misspoke. We may be covering this. I ask Mr. Strelow to comment.

Mr. STRELOW. Calling for a report to Congress to this committee I specifically and in the Senate Public Works Committee on parking surcharges and I believe on exclusive bus lanes.

Mr. GOLDWATER. Let me read the passage in the bill. It mentions bus, car——

Mr. STRELOW. I think it mentions those three. We have already set in motion a report that would cover not only those three topics on the whole range of transportation control measures because we think it is only in that full context that there can be a complete

evaluation and understanding of these measures among others so that we can lay out for the committee the range of alternatives that are available to the States, to local communities, in trying to achieve these further reductions in emissions beyond what you can achieve from the new car controls.

Mr. Goldwater. Mr. Train, just in summary, did I understand that you have in essence suspended or completely eliminated any surcharge, you have suspended parking management to January, 1975, and you are initiating a study in these three areas. I would like to request, and I will certainly not limit it to these two items in your study, you address yourself to the authority that you have to implement these types of controls or regulations because I think that in itself is a question that has been raised by outside people. Second of all, that you address yourself to the economic impact that surcharges, bus lanes, carpools, and especially parking management would have on a particular locale. I am particularly interested in southern California, but parking management, of course, affects many other areas.

Mr. Strelow. Might I mention that we have a special contract study that has been done relating to San Diego, and we anticipate that the results of this will be available in time to be included in the study so that we can give some specific examples of what a particular community has been able to achieve of the economic and social ramifications of those actions.

Mr. Goldwater. Thank you, Mr. Chairman.

The Chairman. The gentleman from Michigan, I believe, has been seeking recognition.

Mr. Dingell. Mr. Chairman, I am very pleased to see my good friend the Administrator here. He is a fine public servant and I am very pleased that he would be here with us this morning.

I was wondering first if we could have any additional comments as to the Wyman amendment? I have had great reservations as to the prudence of this, and the comments that have been elicited in response to questions asked by Mr. Rogers.

Mr. Train. I thought perhaps I had addressed myself more extensively than what the committee really wanted to hear. There are other problems with it. I mentioned the health effects and I also mentioned the auto economy effects, both being quite adverse. I touched on the marketing problem. I think that while this proposal has been widely supported by automobile dealers, I would think that particularly for city delearships this could create various problems of maintaniing a double inventory, and I would think that city dealers would be losing sales to country competitors to whom people would go to buy the high emission and cheaper automobiles.

There are also problems of part supply, where you have to have the availability of different kinds of parts all across the country. Automobiles that require emission controls in regulated areas, certainly you would have to be free to move to other areas, they would have to have available to them no lead gasoline. You can't restrict cross-country mobility of people in their automobiles and catalyst equipped cars designed to meet the higher emission standards of the so-called regulated areas would have to have no-lead gasoline

available to them even when driving across what the bill would consider clean areas, so that filling station operators all across the country would have to have no-lead gas available even though the local market would have no demand for no-lead gas. I think this would be a substantial economic burden.

Mr. DINGELL. Would this have an effect on fuel costs?

Mr. TRAIN. Certainly distribution costs within the industry I think would be—I have no estimate of the amounts but I think that this would be a substantial economic burden. Insofar as fuel economy on the part of the automobiles themselves are concerned, as I indicated earlier, the whole business of disconnecting emission controls is going to produce on the average worse fuel economy.

Mr. DINGELL. Now, Mr. Train, I am troubled about some other matters, and I would like to address your attention to two different points, if I could.

First, we heard a lot about how much fuel use has been increased by air pollution devices. We have heard not a word about how much fuel use has been increased by the additional weight which has been caused by the safety devices. Has your Agency made any study about that?

Mr. TRAIN. Yes, sir, we have complete data on this.

Mr. DINGEL. I would like to have that submitted for the record.

[The information requested was not available to the committee at the time of printing—July 1974.]

Mr. DINGELL. I would like to have you summarize it briefiy at this time: I am satisfied that the automobile has gone up about 500 to 1,000 pounds as a result of safety requirements and that this has had a significant increase on fuel consumption. Would you address yourself to what the additional weight and what the additional fuel consumption is from the so-called safety devices that have been imposd upon the motoring public?

Mr. TRAIN. There are varying factors which of course have increased fuel diseconomy, to put it backward, over recent years. The air-conditioner is a very substantial item, I think around 10- to 15-percent fuel penalty. Automatic transmission, 2 to 15 percent. Automobile weight is by all odds the largest single determinant of fuel economy at the present time.

Now emission controls I assume do add something to weight. I would think it would be quite negligible. Safety devices I would agree, particularly structural requirements, probably would be a good deal more significant but then just simply the fact that American cars have tended to get bigger and bigger over the years is probably the largest single factor.

Mr. FREY. Would the gentleman yield?

Mr. DINGELL. I am about out of time.

Mr. FREY. I just came from a meeting, Mr. Dingell, where the other cost factor was an average of $750 a year per car on the additional equipment, safety devices, and emission controls. That was the overall figure.

Mr. DINGELL. That is the cash price, but I am interested in weight and so forth.

Will you make some submission to us, Mr. Train, so that the

committee can have that before us because I intend to offer an amendment to consider fuel considerations that I think is good sense.

Now what about scrubbers and so-called periodic controls? Is there any reason why these companies cannot be compelled to go to scrubbers? Do we have a technological feasible scrubber which will work to remove pollutants from stacks where coal is burned?

Mr. TRAIN. The EPA believes quite firmly that we have succeeded in demonstrating a number of different technologies that are reasonably reliable and which do do the job in terms of substantial reductions in emissions, particulraly sulfur oxides.

Mr. DINGELL. I am particularly concerned about sulfur oxide. You are making the flat bald statement to this committee that there is an adequate technology to provide adequate air pollution controls with the use of scrubber devices where high sulfur coal is burned, is that correct?

Mr. TRAIN. Yes, with some qualifications. First, there is not an adequate supply available to equip all plants that would need it all at once, for example. In other words, this would have to be installed. These would have to be installed over a period of time.

Mr. DINGELL. What is the statutory deadline then on that time exemption which we could give?

Mr. TRAIN. Well, the deadlines in the statute really are not in terms of the installation of the particular technology but that standards and State implementation plans with respect to emission limitations must be met by a certain statutory date, 1975, and with the extensions up to 1977.

Mr. DINGELL. Are those rates adequate for the installation of scrubbers?

Mr. TRAIN. Not really at the present time. This opens up one of the issues which I have addressed recently in the Clean Air Act amendments which we have sent to the Congress. I think it is apparent that even if all power companies proceeded forthwith to acquire and install scrubbing devices they could not do so in time to meet those statutory deadlines. It is just a physical impossibility. It takes anywhere from 18 months to 3 years to purchase and install a scrubber. As you know, they are very large, very complex mechanisms, and we feel that we do need additional flexibility under the Clean Air Act under enforcement orders where the deadline cannot be met because of either fuel availability or technology unavailability.

Mr. DINGELL. You are asking for that authority at this time?

Mr. TRAIN. No, sir. I honestly believe this would not be the best legislation to deal with those basic considerations of the Clean Air Act.

Mr. DINGELL. I would reiterate, Mr. Chairman, I have requested certain information from Mr. Train, and we would appreciate receiving it for the record, and ask that the record do remain open and that it be received.

Of course, Mr. Train, I know we will have your cooperation.

Mr. TRAIN. And also on the whole issue of stack scrubbers because by answer was a little bit brief.

Mr. DINGELL. Because of time.

The CHAIRMAN. Any further questions on this side?

The gentleman from Florida.

Mr. FREY. Thank you, Mr. Chairman.

Mr. Train, one area that we had testimony on the last time this bill was before the Congress was the question of the companies that convert to the use of coal and the amount of time that they would need—time in terms of finding the coal, entering into long-term contracts, and the economic problems of it. Under this act as I understand it it would be in essence a 5-year exemption that we would have. That is correct, isn't it?

Mr. TRAIN. They would not be required to come into full compliance with State emission limitations until the statutory date which under the bill is January 1, 1979. They would have to meet primary standards under the existing implementation plans though in the meantime.

Mr. FREY. This may not be your concern, but in the studies you have looked at, is the 5 years enough? We have heard in essence that if somebody is going to convert and do this that they have to look economically at about a 10-year problem. Is that true?

Mr. TRAIN. Well, I am not sure that I am the best one qualified to address that, Mr. Frey. I think we feel that there is no reason why any plant converting cannot come into by the 1979 or 1980 date as under the administration proposal, and that is our concern. Once they are in full compliance, there is no constraint on their ability to use the coal, so I don't see that there is any interference with the market situation.

Mr. FREY. Thank you very much.

I have no further questions.

The CHAIRMAN. Any further questions?

The gentleman from New York, Mr. Murphy.

Mr. MURPHY. We certainly appreciate your coming here this morning.

In the legislation vetoed by the President, the language was pretty clear. There would be no relaxation of the ambient air quality in the air sheds. We also understand that many of the air sheds have a much higher stack proliferation than other air sheds. Now is there sufficient low sulfur oil available for the powerplants and other generating sources in the air sheds that have the high stack proliferation, such as the New York-New Jersey air shed and others?

Mr. TRAIN. I am going to turn that question over to Mr. Lerner, if I may, Mr. Murphy.

Mr. LERNER. Congressman, you are asking if there is enough low sulfur oil available right now?

Mr. MURPHY. Well, through a heating season or a long-range basis.

Mr. LERNER. There was during the winter when we could not get any oil at all, the problem of getting the low sulfur oil. Low sulfur oil is now available as far as heavy fuel oil is concerned. The longer run outlook is no longer clear until we know what the production levels the Arabs will be willing to undertake, and that is not clear yet. We do know that the technology is certainly available to de-

sulfurize the oil if the oil is going to be available. There is no reason to expect the same kind of problem that we have had in coal. Technology has been available.

Mr. MURPHY. Mr. Train, have you recommended to the Federal Energy Office that the low sulfur oils go to the air sheds that have the high stack proliferation, and has the Federal Energy Office taken your recommendation?

Mr. TRAIN. We did recommend that in really the earliest discussions back in last September of the impending fuel problems and that, of course, was before the embargo hit. I was suggesting a mandatory allocation authority which could also take into account the need for low sulfur fuels in given areas. I don't think this has actually been a problem during this current winter.

I am going to ask Mr. Lerner again who has also been working with FEO to comment further on this.

Mr. LERNER. Congressman, there are only a few cases where oil that could not meet the sulfur regulations was not available. The EPA and the States have granted something like 10 to 15 variances over the course of the winter, not the hundreds that were expected back in the fall.

Mr. MURPHY. Were any of those variances in New York?

Mr. LERNER. Yes. There was a variance on oil granted to Con Ed that applied to all of its suppliers. All of its suppliers with one exception were able to provide the 3 percent sulfur fuel during the winter. That one exception was the supplier who got its fuel from Libya and they provided mostly conforming fuel but some high price sulfur fuel. With the embargo lifted——

Mr. MURPHY. Was this done on your recommendation?

Mr. LERNER. The variance, you mean?

Mr. MURPHY. That is right.

Mr. LERNER. Well, the variance was done on the recommendation of the State and city officials initially.

Mr. TRAIN. Application by the public hearings held by the city and then by the State, and then recommendations by them to our regional office and to Washington. We had two applications as I recall from Consolidated Edison to convert to coal during this past winter, one for the Arthur Kill and Ravenswood plants. I know the latter better by the name of Big Alice. We turned down, as I recall, the Ravenswood request and granted the application for the conversion for the winter only up through I think the end of March for Arthur Kill because of the long lead time required for that plant to convert if it was going to. It never did during the winter, and I believe Con Ed has requested a longer time variance, and the city has turned that down, so that is not an issue that is before EPA.

Mr. MURPHY. Would your decision to permit the conversion of the Arthur Kill plant affect the ambient air quality of the region?

Mr. TRAIN. I would think necessarily it would unless conceivably low sulfur coal of the same sulfur content was avaialble.

Mr. MURPHY. Thank you. Mr. Chairman.

The CHAIRMAN. Any further questions on this side?

The gentleman from Illinois.

Mr. YOUNG. Mr. Train, did I understand that you said earlier in the hearings on this bill that you would oppose any extension of the standard which this bill provides to maintain the 1975 standards through 1976? It was my understanding, and I saw in the newspaper report that you oppose further extending that through 1977. Is that correct?

Mr. TRAIN. It was not a matter of opposing, I said that as I recall I have to think back to some months ago that EPA at that time recommended going forward with the 1975 interim standard. There had been considerable discussion of the posibility of freezing the current 1974 standard, and I think that was the issue mostly on our minds, and we had stated that we could address the 1976 and 1977 question more effectively once we had the certification test results on the 1975 model cars, which would be somewhat later this spring, perhaps this summer.

Mr. YOUNG. You would support then the provision of this bill which gives the EPA the authority to extend the 1975 standards through 1977 if you felt it was necessary for a significant fuel economy, is that correct?

Mr. TRAIN. We stated that when at the time of the bill's passage previously it seemed like a reasonable solution given all of the barriers, pros and cons of emission standards and so forth that are involved. As I pointed out earlier, the President has gone one step further in his proposal sent up at the time of his energy message some weeks ago to actually suspend or to continue the 1975 standards not only for 1976 but also for 1977. As I said, I am transmitting that proposal to the Congress, and——

Mr. YOUNG. Engineers in my district, and particularly those with Universal Oil Processes claim that we can have both a clean environment and better fuel economy through the catalytic converter in 1975. Would you agree with that statement?

Mr. TRAIN. I certainly do, very strongly.

Mr. YOUNG. The other point they make is that even though you have to go to nonlead gasolines with the catalytic converter that there is a net overall energy savings by using the nonlead gasoline. Do you agree with that?

Mr. TRAIN. Those are estimates, and the data provided us by outside contractors very knowledgeable in the oil industry would confirm this. Taking into account both the increased gasoline efficiency in the automobile and some additional crude costs at the refinery, these net out either to a small penalty or pretty much in balance as I recall, so that the no-lead requirements don't involve any significant energy penalty.

Mr. YOUNG. General Motors I understand claims that if you do go to the higher 1976 standards that even though they can have significant fuel economy through the 1975 models using catalytic converters that if you have to go to the 1976 standards you are going to reduce the fuel economy. Why is that? What would be the basis of such a claim that the 1976 standard would reduce the fuel economy?

Mr. TRAIN. That is a little out of my particular field, but I would say that the probable reason for that increased fuel penalty would be the more stringent nitrogen oxide standard. It is 3.1 under exist-

ing law, and it would go to 0.4 as I recall under the actual statutory standard in 1976. Carbon monoxide and hydrocarbons, somewhat stricter standards, also would require some additional fuel penalty.

So these are the tradeoffs that you have to consider.

The CHAIRMAN. I am going to go out of order for just 1 minute if the gentleman from Washington would permit the gentleman from Minnesota, because his wife and daughter and grandchildren are waiting for him.

Mr. NELSEN. I have only this question. Dealing with the scrubbers on stack emissions I saw a picture of an area where the residue had been deposited in a vast area. My feeling is that there could very well be, by leaching and rainfall and sunshine and weather change, some danger to the underground water supply. Now has there been any research as to that, and is it very extensive in the other effects of the product that comes from the scrubbers?

Mr. TRAIN. First, not all technologies produce this kind of residue. That is the throwaway technology. Other technologies can produce an actual useable product such as sulfuric acid.

With respect to the throwaway technologies which can involve the very substantial sludge residues there are uses for these sludges in terms of road construction for example, construction building boards and things of this sort. I suspect, however, that the amount available would probably far exceed the demand for those kinds of uses. So I would be the last to suggest there is not a problem that has not been fully dealt with in terms of these sludges. In some areas they are being disposed of in old strip mining areas. There are possibilities of that sort.

We have under way in the EPA a coordinated research program which I am pushing personally very hard on dealing with these residues. The whole problem of sludge residue from sewage treatment plants, from stack emission controls is the growing problem in this country, and I think that we really have not addressed them as adequately as we should. The problem cuts across all the areas of responsibility in EPA, solid waste, and air, and water programs and so forth.

I have just established a coordinated program to see to it that we move ahead aggressively in this area.

Mr. NELSEN. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Washington, Mr. Adams.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. Train, is it true that removal of the emission controls can void the auto warranties?

Mr. TRAIN. I will ask Mr. Stork to answer.

Mr. STORK. Mr. Adams, it is a technical question, a legal question. This would have to be taken up with each individual company, but typically the companies take the position that unauthorized tampering with their vehicles could be used as a basis for avoiding liability under warranty.

Mr. ADAMS. Thank you.

Mr. Train, the fundamental question before this committee which concerns some of us and about which we had terrible arguments when we were marking up the prior bill, is that the energy crisis

or lack of supply of fuel is the basis by which we are going to do away with many things that are good in this country and have been achieved at great cost and that really are small in point of fuel saving as compared to the other factors. You testified earlier, and I will try to paraphrase it because it was close to what I believe is the situation, and that is that the bigger the automobile the less efficient it is on fuel per mile of passengers carried. First, is that correct?

Mr. TRAIN. Absolutely.

Mr. ADAMS. Second, that with the use of emission controls that smaller cars benefit more than bigger cars.

Mr. TRAIN. Let me ask Mr. Stork to address that because that is a technical question that I may misspeak on.

Mr. ADAMS. You said 10 percent was lost with emission controls as an average, but it could go 18 percent on bigger, and might produce a fuel benefit on smaller.

Mr. TRAIN. I will stand by what I said on the upper range, but I think he better explain what we mean at the lower end of the scale.

Mr. STORK. Mr. Adams, the 10 percent figure is a sales weighted average.

Mr. ADAMS. What do you mean by sales weighted?

Mr. STORK. What we mean by that, sir, is that if we, for example, see on the roads today 10 Buicks that might get 10 miles a gallon and a Volkswagen that might get 20 miles a gallon we do not add 20 plus 10 and divide by 2 to come up with 15 miles a gallon average. Rather we take 10 Buicks at 10 miles, that is 100 miles, plus 20 miles for the Volkswagon, and divide by 11 to come up with the average mileage for all cars.

Mr. ADAMS. Now answer my second part about the smaller car.

Mr. STORK. Yes, sir. The sales weighted average for all cars is 10 percent. Larger cars as Mr. Train pointed out have shown losses up to about 18 percent. When you look at the fuel economy of smaller cars, 3,500 pounds or less today and compare that to the fuel economy of similar weight cars with similar air conditioning, et cetera, before emission control was imposed you will find that they have about the same fuel economy today that they used to have; in fact, better. We are not saying, sir, that a smaller car today could not have even better fuel economy if you took the emission controls off.

Mr. ADAMS. All right. That is why I want to go to Mr. Train or to either one of you, because this is the argument that we have. The basic fuel mileage loss, because that is what this bill is about, is saving of fuel, that has occurred since 1967, and an order of importance has been causd by these factors. If you will list them for me because you testified to them very briefly. Air conditioning, 10 to 15 percent as compared to maybe a 10 percent loss; automatic transmission, 2 to 15 percent; weight you didn't give me a percentage.

Mr. TRAIN. Well, I don't know that I can.

Mr. ADAMS. But the testimony will stand that on the cars below 3,500 pounds they are performing with emission controls approxi-

mately at the same place that they were prior to the emission control being put on them.

Mr. TRAIN. Yes, sir.

Mr. ADAMS. We don't say there could not be perhaps an improvement.

All right. Finally, isn't it true that the major factor in fuel consumption going up in the United States is not emission control standards but size, weight, and extra items placed on automobiles in the last 7 years?

Mr. TRAIN. Absolutely. There is no question about that.

Mr. ADAMS. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Nebraska.

Mr. MCCOLLISTER. Thank you, Mr. Chairman.

Mr. Train, I am referring to section 205 of the bill where it gives you the right to the maximum extent practicable measures to assure that available low sulfur fuel will be distributed on a priority basis to those sections designated by the administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

Because I am from the Midwest, and because our Midwestern midcontinent sweet crude is essentially low sulfur crude, and because Midwestern refineries don't have the capacity to use high sulfur fuel, what has happened in the past is that the exportation of low sulfur crude from the Midwest to other areas of the country has meant that Midwestern refineries operate at something considerably less than capacity, 75 or 80 percent, which seems hardly the thing to do in a period of time when we are straining for fuel production refinery capacity all over the country.

Now my question to you is, how will it be reconciled in your duty here to consider the public health in assigning low sulfur crude about the country together with the need to produce as much fuel as possible and to use the refining capacity of the Midwest as efficiently as possible? How do you reconcile those two which seem to be opposing requirements?

Mr. TRAIN. Mr. McCollister, first let me say that the authority to which you are referring under section 205, the allocation authority, would be administered by the Federal Energy Office.

Mr. MCCOLLISTER. Yes, but you designate the areas.

Mr. TRAIN. I mean I don't intend that to be my full answer to your question.

The provisions I think obviously does require a balancing of environmental needs and other factors. It says, "To the maximum extent practicable." And I would assume that the Administrator of the Federal Energy Office would take into account refining capacity needs, the economic needs of diffrent areas of the country, in making his allocations in addition to the environmental needs which the administrator of the EPA would have responsibility for bringing to his attention.

Mr. MCCOLLISTER. Well, let us say that you in surveying the situation decide that 800,000 barrels a day of low sulfur Midcontinent crude be diverted to Eastern or Western refineries, and let's say that the Administrator of the Federal Energy Office or admin-

istration says, "No, that is going to leave us short on refining capacity and Midwestern refineries, because they cannot use high sulfur crude, are going to end up operating at 85 percent." Now who has the final word on it?

Mr. TRAIN. It is my understanding that that is the responsibility of the FEO. That is where the final allocation authority would be.

Mr. MCCOLLISTER. Thank you.

One other question raised by the gentleman from Washington was comment on various things which affect fuel economy in our hearings relating to automobile safety in the Commerce and Finance Subcommittee. It seems pretty clear from those hearings that automobile safety decreases rather markedly as you decrease the size and weight of the automobile. So here again it would seem we have to balance conflicting requirements of fuel economy on the one hand and automobile safety on the other hand. Do you have any comment on that?

Mr. TRAIN. Well, not directly on point. I think that very likely is the case. Smaller cars definitely have perhaps less structural strength.

I hear a no from the expert on my left, so I will ask him if he has something to add to my comment.

I would note that the greatest step forward on automotive safety at least in my memory has been the slower driving speeds of the last few weeks and months. I think it has seen a very remarkable drop in accident rates all across the country, and we have accomplished far more by cutting driving speeds 10, 15 miles per hour than by all of the safety devices that have been mandated by law over the years.

Mr. STORK. Congressman, we have had extensive discussions of this issue with NHTSA and certainly what Mr. Train said is entirely correct, all other things being equal. The point is that in the design and configuration of automobiles not all other things are equal and it is NHTSA's position as I understand it that a great deal can be done that has not yet been done to improve the safety of smaller cars to a point where some smaller cars may be safer than some larger cars are today. It is again a question of balancing and of doing everything than can reasonably be done in view of all the objectives that the Nation must have.

Mr. MCCOLLISTER. Even so, however, testimony before the subcommittee chaired by the gentleman from California, Mr. Moss, showed that if all cars were small cars, then you would not have the mix of small and big, that it would still be less safe than having all cars be big cars, or all cars be a mixture of small and large, that there is some added hazard from a small car, though I grant the accuracy of your statement that small cars like big cars can be made a great deal more safe.

The CHAIRMAN. The gentleman from Maine.

Mr. KYROS. Mr. Chairman, I have two short questions which can be answered categorically.

Mr. Train, you recall this committee and the Congress passed a mandatory allocation program, and yet the FEO in its existing regulation and proposed regulation seems to be severely restricting the growth of gas service to residential consumers for space heating

and other similar essential uses that we need in the Northeast and other parts of the country.

I would like to ask you for the record whether the burning of natural or synthetic gas or a mixture of both is not immensely more desirable from the standpoint of air pollution than the burning of coal or fuel oil to generate the same amount of heat?

Mr. TRAIN. Yes.

Mr. KYROS. The second question, is there any difference at all between burning natural gas or the burning of synthetic gas of pipeline quality?

Mr. TRAIN. I don't believe there is.

Mr. KYROS. Thank you very much, Mr. Train.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Texas.

Mr. COLLINS. Mr. Train, did I understand you to say that you do not favor sectional flexibility but you would rather set up the standards? Is that what you advocate?

Mr. TRAIN. With respect to auto emission I believe we need a national standard with the single exception of California where we have maintained, historically, a different State level and I think that is acceptable and it can be administered, but I think a dual system nationwide would be a disaster for the air quality program.

Mr. COLLINS. Now this is very important because as I understand it 50 percent of petroleum is used in the automobile, isn't that right?

Mr. TRAIN. That is right, sir.

Mr. COLLINS. So we are really talking about something most important as to how we could improve oil supplies by lowering standards. Now what I don't quite understand myself is why we need the same requirements on auto emissions in small towns in Louisiana, Arkansas, or Kansas—let me put it this way. I was just sitting here thinking, and we found at home you need to put diapers on an 8-month-old, but a college sophomore that is 19 would be very reluctant to wear diapers. Now I can't see why these little towns all around should be under exactly the same requirements as those major cities. The situation is completely different, and there is a complete reluctance in our area to put diapers over everybody in America.

Mr. TRAIN. I don't think your figure of speech is exactly accurate, because as we move along in life we do develop self-control obviating the need for diapers, but I don't think that automobiles demonstrate the same characteristic.

Mr. Collins, let me say I addressed this quite extensively I think before you came in. This is by my life a very seriously adverse proposal with all due respect to Mr. Wyman for whom I do have very great respect. The Wyman bill would designate some 13 areas in the country, none of which included Texas I gather, although I do believe there are some substantial auto emission problems in the State of Texas. It designates some 13 areas in the country which would be regulated from the standpoint of auto emission and cars registered in those areas would have to have emission controls and those outside not.

Mr. COLLINS. That is right.

Mr. TRAIN. It is our estimate that were it not for auto emission

controls there are some 66 metropolitan areas, not 13—some 66 metropolitan areas in the United States all across the country which would be violating primary health standards in the absence of these controls, and that in those areas about 85 percent of the American people live. So the tradeoff that this bill is proposing in order to achieve very speculative increases in fuel economy is a reduction in public health for about 85 percent of the public with respect to the fuel economy aspects of the bill.

It is our very serious considered conclusion that they are almost completely illusory. They involve with respect to existing cars the deactivation of emission control devices, and it is our best technical judgment that on the across-the-board basis this is not going to be achieved with any increased fuel economy across the country. It is on the average, we are quite satisfied, probably going to result in worsened fuel economy because this has been our experience in trying to deactivate emission control devices, and it has been our experience in taking automobiles to commercial garages which advertise deactivation on the average they have produced a 3.5-percent worsened fuel economy with the existing cars.

Mr. Collins. Mr. Train, could you furnish our committee that figure you gave of 85 percent of the population lives in cities that have this intense problem due to auto emissions?

Mr. Train. Yes, sir.

Mr. Collins. Do you have figures that show that 85 percent of America is in auto emission condensed negative impact areas?

Mr. Train. Yes, sir. Be glad to provide that for the record.

[The following letter was received for the record:]

U.S. Environmental Protection Agency,
Office of the Administrator,
Washington, D.C., April 3, 1974.

Hon. Harley O. Staggers,
Chairman,
Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

Dear Mr. Chairman: During Mr. Train's appearance before your Committee on Tuesday, April 2, we agreed to supply a number of items for the record. Because of the particular interest expressed by a number of Committee members concerning the Wyman Amendment, we are supplying a fact sheet outlining our reservations, including the list of 66 cities requested by Mr. Rogers.

To avoid possible misunderstanding, I would draw your attention to the discussion in the fact sheet of the proportion of the population which is found in the areas that would require cars with emission controls in order to attain and maintain health standards. The 85 percent figure given during the testimony is based on the assumption that in order to make a two-car strategy feasible and enforceable, cars with emission controls would have to be sold throughout any State in which one or more of the 66 air quality problem cities are located. The fact sheet explains the basis for this assumption. If it were possible to focus precisely on the 66 cities alone, the affected portion of the population would be about two-thirds rather than the 85 percent, as the fact sheet explains.

We hope that this clarification and the fact sheet will be useful to you in your consideration of this important issue.

Sincerely yours,

Robert G. Ryan,
Director, Office of Legislation.

Enclosure.

Wyman Amendment

Passage of this measure would not result in significant energy savings, but would have serious environmental implications.

ENERGY IMPACTS

Supporters of the bill state it would result in fuel savings of 17–20%. This claim is inconsistent with fuel economy facts.

1975 catalyst equipped cars (60–70% of 1975 new car sales) will have approximately the same fuel economy with or without catalysts, GM and EPA estimate potential fuel economy increases from decontrol of 1973–74 model year cars in the range of 5–7%.

However, to check feasibility of decontrol, EPA asked 8 garages to remove emission controls from a group of tuned-up cars and a 3.5% *loss* in fuel economy resulted. Automobile manufacturers also stress the importance of proper performance of decontrol.

Average fuel economy penalty of control devices on 1968–72 cars is much less than current models—approximately 5%; of this penalty it is estimated that at most 2–3% is recoverable by decontrol.

Assuming that 100% of the vehicles are successfully decontrolled, a fuel economy savings of about 3% might be obtained, rather than the 20% savings claimed by some supporters of the bill.

AIR QUALITY IMPACTS

The bill limits designation of regulated areas to 13 cities. EPA data show that 66 cities will experience violations of health standards for carbon monoxide or oxidant without emission controls. These cities contain roughly 2/3's of the automobiles and population in the nation (see attached list of cities). The only effective enforcement system would have to be Statewide, for each State containing one or more of the 66 cities. This would then cover 85–90% of the U.S. population. (see next page)

In "clean" cities, pollutant concentrations of both CO and oxidants would *double* by 1977 under Wyman bill proviisons.

There would be a strong incentive to buy dirty cars, even in heavily polluated areas. Ambient air concentrations of CO and oxidants would rise 10–15% from normal household relocation movements and even more due to imperfect enforcement.

The bill would greatly expand the need for transportation control measures and restrictions on new emission sources to counteract decontrol of auto emission devices.

While fuel savings from this measure are minor or non-existent it is clear that the air quality impact is significant.

ENFORCEMENT PROBLEMS

The Wyman amendment as presently structured is unenforceable. This problem is heightened by the incentive for urban residents to buy dirty cars that are cheaper.

The bill requires States to develop an enforcement program in 60 days. From previous experience, EPA projects a minimum of 15 months is needed to adopt new registration procedures and laws for implementing, enforcing and administering these procedures.

Since a State enforcement effort could not be put in place until the effective expiration date of the bill in 1977, Federal enforcement would be necessary.

Even under Federal enforcement, every controlled area would have to establish a mandatory vehicle inspection program and meet other requirements which could not be put in place within 60 days.

It would be necessary to prohibit new car dealers in polluted regions from stocking or selling the exempt "dirty" cars, rather than expect dealers to enforce. Such a prohibition would lead people to travel a few miles to buy the cheaper car—with possibly disastrous impacts on the city dealer's business.

The only feasible enforcement strategy which could be implemented quickly is on a uniform statewide basis, using Statewide auto registration systems.

States with problem cities would have clean cars throughout the States—as California does now. States without areas violating health standards would be decontrolled. Under this system 85-90% of the vehicle population would have to be fully controlled. Thus, the only quick enforcement mechanism of Statewide uniformity would allow decontrol on only 10-15% of the nation's automobiles.

AUTOMOBILE MANUFACTURER RESPONSE

The feasibility of a two car strategy has been studied by EPA and it was found that the complexity of manufacturing, marketing and distribution of automobiles increased significantly with more than two control areas.

Manufacturer production plans and EPA certification of 1975 models is well under way. No significant decontrol of these models could be expected until February of 1975.

This strategy causes special problems for small manufacturers—American Motors stated that it could not accommodate more than 10 control areas.

Ford maintains there is a 10 to 20 fold increase in marketing complexity when controlled areas are extended outside California. The probable marketing cost increases have not yet been estimated.

Manufacturers expressed doubts as to the adequacy of service and availability of parts for controlled cars outside the designated areas.

It seems unreasonable to require nationwide distribution of unleaded gasoline under a 2-car strategy, yet without nationwide availability, the mobility of the clear car driver is severely restricted.

TABLE 1.—AQCR'S EXCEEDING CO AND OXIDANT AIR QUALITY STANDARDS

AQCR	CO	Oxidant	AQCR	CO	Oxidant
Albuquerque	×	×	Miami		×
Atlanta	×		Milwaukee		×
Atlantic City	×		Minneapolis [1]	×	
Austin		×	Mobile		×
Baltimore [1]	×	×	Monterey		×
Beaumont [1]		×	Nashville	×	×
Birmingham	×	×	New York [1]	×	×
Boston [1]	×	×	Norfolk		×
Buffalo	×	×	Oklahoma City	×	×
Charleston, W. Va	×		Omaha	×	
Charlotte		×	Paducah	×	
Chicago [1]	×	×	Philadelphia [1]	×	×
Cincinnati [1]		×	Phoenix [1]	×	×
Cleveland	×	×	Pittsburgh [1]	×	×
Columbus		×	Portland, Oreg. [1]	×	×
Corpus Christi		×	Providence	×	
Dallas [1]		×	Richmond, Va		×
Dayton		×	Rochester, N.Y. [1]		×
Denver [1]	×	×	Sacramento [1]	×	×
Des Moines		×	St. Louis [1]	×	×
El Paso	×	×	Salt Lake City [1]	×	×
Fairbanks [1]	×		San Antonio [1]		×
Fresno [1]	×	×	San Diego [1]	×	×
Honolulu	×		San Francisco [1]	×	×
Houston [1]		×	Seattle [1]	×	×
Indianapolis [1]	×	×	Spokane [1]	×	
Indio		×	Springfield, Mass. [1]	×	×
Jacksonville	×	×	Syracuse	×	×
Kansas City	×	×	Tampa		×
Las Vegas [1]	×	×	Toledo		×
Los Angeles [1]	×	×	Tulsa		×
Louisville	×	×	Wichita		×
Memphis		×	Washington, D.C. [1]	×	×

[1] Transportation controls required.

Mr. COLLINS. Fine. Thank you.

The CHAIRMAN. What was the question of the gentleman from Texas?

Mr. COLLINS. I would like to yield to the gentleman from Florida just a minute.

Mr. Frey. I have just one question regarding the high sulfur fuel. It obviously takes energy to change from high sulfur to low sulfur fuel. Assuming we could even get the high sulfur fuel, do we have enough capacity to change from the high sulfur to the low sulfur fuel?

Mr. Train. We have places you can.

Mr. Frey. It was my understanding that the projections we have, looking down the line, we don't have the capacity, but I just——

Mr. Train. What is the refinery capacity you are talking about?

Mr. Frey. Desulfurization, I guess, is a technical term. Do we have enough capacity to do this?

Mr. Train. We do not at the present time, no. We have had very little new refinery capacity added in this country for some years for a whole complex set of reasons as you know, and it would be the newer capacity which typically would include desulfurization technology.

Mr. Frey. I would like for the record, if you could, to provide how many more of these types of plants we need on a projected basis and the cost of that so we can get some idea of what we are talking about.

Mr. Train. I will try to provide that.

[The information requested was not available to the committee at the time of printing—July 1974.]

The Chairman. The gentleman from Texas.

Mr. Eckhardt. Mr. Train, I am concerned about the provision of the bill dealing with the question of companies that are required to change to coal or which during the 90-day period ending on December 15, 1973, have commenced to change to coal. Incidentally, in the latter category their activities may be somewhat small in order to classify them because they may have made certain applications that they have added in certain contracts and they may be classified as having changed during that period. But in the bill, which is incidentally, I think, in this respect the same as the Conference Report, it is said that when they do so convert to the use of coal they shall not until January 1, 1979, be prohibited by reason of the application of any air pollution requirement from burning coal which is available from such source.

Do I understand that that is qualified by the provision of the next section 2(A) in which it said that, "The Administrator"—that is, the Administrator of EPA—is still in the position to determine "if the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved, after notice to interested persons", et cetera?

In other words, would they not be prohibited from burning coal unless they had a plan of compliance which, for instance, provided for what were considered to be reasonable scrubbing devices?

Mr. Train. Yes, I think that is generally true. Let me expand on that, Mr. Eckhardt, for a moment. The bill is complicated to follow this through. On page 64 down from line 14 it sets out the conditions which the Administrator must require in the case of a conversion, and among others it has under B:

> Such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons.

We have recommended that that be changed to avoid any violation of primary standards.

I am in the wrong place. I beg your pardon.

Mr. ECKHARDT. Are you talking about on page 67(2)(A)?

Mr. TRAIN. Yes. I am sorry.

Mr. ECKHARDT. Page 67(2)(A).

Mr. TRAIN. I appreciate the correction.

Mr. ECKHARDT. And also on page 68 in (C) it is provided that:

> Regulations under subparagraph (B) shall require that the source achieve the most stringent degree of emission reduction that such source would have been required to achieve under the applicable implementation plan which was in effect on a date of the enactment of this section.

Now I assume that would mean, for instance, if it became available to obtain the type of scrubbing equipment that is described in the Report of the Hearing Panel, National Public Hearings on Powerplant Compliance.. I think that your Agency has published—if it became possible to apply those kinds of a supply as described on page 5 like the chemical Mitsui Miike Lime scrubber or the Louisville Gas and Electric Paddy's Run Lime Scrubber, and then I think on the next page another type scrubber—if these became available and practical to apply, notwithstanding the language that says that a converted plant could continue to January 1, 1979, could not be prohibited from using coal, nevertheless its continuance of operation on coal could be subject, could it not, to the requirement that these technological devices available at that time be put into use?

Mr. TRAIN. That is correct, and that also is true of the language although it is a little bit different under the administration's new version of the coal conversion provision which we recently transmitted.

Mr. ECKHARDT. I ask you these questions really as a matter of legislative history because the language that the plant may not be prohibited from using coal up until January 1, 1979. I think you suggest that be extended to 1980.

Mr. TRAIN. That is correct.

Mr. ECKHARDT. It says it, "shall not be prohibited from using coal by reason of application of any air pollution requirement", but nevertheless that is conditioned on the later provision that I have read to you, is that not true?

Mr. TRAIN. That is correct, sir.

Mr. ECKHARDT. Thank you very much, sir.

The CHAIRMAN. The gentleman from Maryland.

Mr. BYRON. Mr. Train, I just wanted to ask one question in connection with the stationary emission.

Over on page 63 dealing with the question of the Administrator, that is obviously by definition the Federal Energy Administrator?

Mr. TRAIN. No, this is the EPA Administrator. This is an amendment to the Clean Air Act on page 63.

Mr. BYRON. Maybe you could clear me up on this. I read definitions under section 102 as being—the term Administrator means the Federal Administrator.

Mr. STRELOW. Congressman, I believe that applies to title II.

Mr. BYRON. Now if this does apply to you, would you take it to

mean the unavailability of types of amounts of fuels? Would this be price or physical unavailability?

Mr. TRAIN. I think that what was in mind largely was physical unavailability. I suppose at some point price reaches a level which it so affects availability so that it should be taken into account. I think there is largely physical unavailability that was intended here.

Mr. BYRON. I just wanted to clear that up.

Mr. TRAIN. Thank you.

The CHAIRMAN. Is that all?

I want to thank the gentleman.

Mr. VAN DEERLIN. Mr. Chairman, there are no questions to be answered, but some information sought for the record.

The CHAIRMAN. All right.

Mr. VAN DEERLIN. Mr. Moss had to leave. He was concerned with getting some comment from the Agency on a complaint by a representative of the Los Angeles County Air Pollution Control District that the Southern California Edison Co. has been required to allocate some of its reserve of low-sulfur, low-pollution fuel to other localities and to burn instead high-sulfur, high-pollution fuel. I think that is something that we could get a report on for the record. If possible, Mr. Chairman, I would also appreciate an analysis by the Agency on the verities of a dispute that is underway in San Diego County over a vapor control program at the gas pump level. There is considerable feeling on both sides here, and it seems to me that from a distance of 3,000 miles we might obtain a little more light than is available even in San Diego.

Mr. TRAIN. We will be glad to respond to both of those for the record. The first one we will have to contact the Federal Energy Office. I believe they would have primary responsibility.

With respect to the vapor recovery systems, I am aware of the problem. I am not sure what the vagaries are at the moment, but we will be glad to throw as much light on the issue for you as we can.

Mr. VAN DEERLIN. Thank you, sir.

[The information requested was not available to the committee at the time of printing—July 1974.]

The CHAIRMAN. Thank you very kindly for coming and being with us, Mr. Train. You have been very enlightening and it will be helpful to those in writing the bill.

Mr. TRAIN. Thank you.

The CHAIRMAN. I would like to announce at this time that the committee will adjourn until tomorrow morning at 10 o'clock and we will hear Mr. Simon.

I would say that Mr. Herbert Misch and Dr. Frederick Bowditch, Mr. William Lalor, Mr. Robert V. Price, Dr. Lorin E. Kerr and Mr. Richard Ayres will be heard tomorrow afternoon or Thursday. The committee counsel will keep in touch with the clerk and if it is possible that will be heard tomorrow afternoon: if not, it will be Thursday morning. We will try to get to it tomorrow afternoon if possible.

STATEMENT BY SENATOR JACKSON, APRIL 11, 1974

S. 3267, Standby Energy Emergency Authorities Act Reported by Interior Committee

Mr. Jackson. Mr. President, yesterday the Senate Interior and Insular Affairs Committee ordered S. 3267, the Standby Energy Emergency Authorities Act, favorably reported to the Senate. This measure is a modification of S. 2589, the Energy Emergency Act, which the President vetoed on March 6.

1. BACKGROUND OF S. 3267

Following President Nixon's veto and the Senate's failure to override the veto, a series of discussions and negotiations on the substance of the bill were undertaken with the White House and administration representatives to see if agreement could be reached on the provisions of the bill.

These discussions continued for approximately 2 weeks and led to agreement on the substance of an emergency authorities bill, with the following exceptions: first, unemployment benefits; second, repeal of the stripper well exemption from price control authority; third, petroleum price controls; fourth, protection of franchised dealers and distributors; and fifth, delegation of authority to the President rather than the Administrator of FEO.

The discussions were terminated when it became apparent that fundamental policy differences on these issues could not be resolved.

On March 28, 1974, companion bills were introduced (S. 3267 and H.R. 13834) which incorporated a number of the changes discussed with the administration as well as provisions on the subjects in disagreement.

2. RELATIONSHIP OF S. 3267 TO AUTHORIZATIONS REQUESTED BY THE ADMINISTRATION

In recent weeks, the President has accused the Congress of inaction on his "energy program." This accusation is patently ridiculous and apparently motivated by partisan considerations. The majority leader answered this charge on March 21 and it warrants no further comment except to say that the authorities the President has requested in four different bills were contained in S. 2589, which the President vetoed on March 6.

As reported, S. 3267 contains all of these authorizations. They include: authorization for rationing, conservation plans and funding for States; energy data and information gathering authority; special unemployment assistance programs; and authorization for conversion from oil and gas to coal by powerplants and heavy industrial users.

3. RELATIONSHIP OF S. 3267 TO THE CONFERENCE REPORT ON S. 2589

S. 3267 is, in many respects, identical to the conference report on S. 2589. The major changes are as follows:

First, the title and other changes have been made to convert the bill from an "emergency" bill into a "standby emergency authorities and contingency planning" bill;

Second, the authorization for the Federal Energy Administration has been deleted in recognition of conference committee action on the FEA bill;

Third, the rationing authority is made subject to congressional review and right of veto;

Fourth, the price rollback provision has been deleted;

Fifth, the unemployment assistance section has been modified to deal with technical and definitional questions;

Sixth, the provision providing for loans to homeowners and small businesses has been deleted;

Seventh, the authorization for the private use of Federal facilities has been deleted.

Eighth, the energy data and information section has been modified; and

Ninth, a requirement for contingency plans to deal with future shortages has been added.

4. COMMITTEE AMENDMENTS PRIOR TO REPORTING S. 3267

Yesterday, in executive session, the committee made the following changes in the bill:

Section 128, the pricing authority provision, was deleted.

Title II, which amended the Clean Air Act, was deleted at the request of the Public Works Committee. A new **title II** will be offered when the Senate considers the bill.

A clarifying amendment was made to **section 107(a)(1)** to emphasize that the provisions of that subsection apply only to Federal lands.

With these changes, the committee favorably reported the bill. The report will be filed during the recess, and I would hope that the Senate will act expeditiously on this bill when we return.

5. OIL PRICE CONTROLS

Mr. President, the committee's action to delete **section 128**, the oil pricing authority provisions, was taken without prejudice to the need for new authority. The section was deleted to enable the bill to be reported.

Together with other members of the committee, I have reserved my right to offer floor amendments dealing with oil prices. I intend to offer an amendment to bring all oil prices under mandatory Federal price control authority when the Senate returns from the Easter recess.

The amendment will cover all categories of oil—new oil, released oil and stripper well oil—which are now exempted from price control authority. At the present time, 40 percent of the oil produced in the United States is exempt from price controls. This figure is up from 29 percent only a few months ago.

If action is not taken to impose some realistic restraints on oil prices, the cartel of producing countries will unilaterally be establishing the price which American consumers will pay for 50 percent of our domestic oil production by the end of the year.

I am appalled that the administration has brazenly—and in my view, unlawfully—adopted a policy of hands off on oil prices. The impact of this policy is both cruel in its impact on consumers and blatantly contrary to the national interest.

Nine weeks ago—on February 2—I wrote to Mr. Simon requesting an explanation of the administration's decision to place vital U.S. consumer interests in foreign hands by decontrolling domestic oil prices. In that letter, I stated that this action is contrary to the clear and plain meaning of the Petroleum Allocation Act. That act requires that equitable prices be established for all crude oil, residual fuel oil and refined petroleum products.

I have yet to receive an answer to that letter. I have yet to receive the memorandum of law I requested on the legality of the administration's actions in removing price controls.

6. NEED FOR EMERGENCY AUTHORITIES AND CONTINGENCY PLANNING

Mr. President, expeditious passage of S. 3267 is necessary because of the major risks the Nation faces in relying upon oil imported from nations whose leaders view and use oil as a political weapon. There are no grounds for confidence that the Arab oil embargo will not be reimposed in the weeks and months ahead as swiftly and with as little notice as it was imposed last fall. We must be prepared for such an eventuality. Indeed, our visible preparedness for and reduced vulnerability to the threat of embargo greatly reduces the probability of imposition of an embargo.

The critical shortages the American people experienced this past winter could well be with us again later this spring and this summer. The essential social and economic interests of the Nation are dependent upon an assured supply of equitably priced oil. These interests must not be placed in uncertain and unpredictable foreign hands. Reliance on insecure sources of high-priced supply is a policy which can only be followed if we are fully prepared to reduced consumption and get by with less petroleum during periods of short supply which others may impose upon us.

It is essential that we have contingency plans and standby authority to deal fairly and equitably with shortages and the risk of shortages in a manner which will maintain employment and a healthy economy.

At the present time, there is no authority in Federal law for the peacetime implementation of programs necessary to deal with acute energy shortages. During the recent embargo, Federal policy was dependent upon requests for voluntary public action and a very broad interpretation of the Emergency Petroleum Allocation Act which, in some respects, far exceeded the scope and purpose of that act.

Mr. President, in the future we cannot continue to rely on voluntary exhortations for sacrifice as our only means to deal with shortages. We must act to increase supply. We must have a policy of energy conservation. We must also have at hand contingency plans which can be

rapidly and effectively implemented if we are to retain economic and political independence. Standby authority and contingency planning to deal with critical shortages will continue to be essential to maintaining our national security and our freedom of action until we attain the capability for energy self-sufficiency.

The bill reported by the committee will provide the authority we need.

Calendar No. 758

93D CONGRESS
2d Session

SENATE

REPORT
No. 93–785

STANDBY ENERGY EMERGENCY AUTHORITIES ACT

REPORT

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

together with

ADDITIONAL AND MINORITY VIEWS

TO ACCOMPANY

S. 3267

APRIL 19, 1974.—Ordered to be printed
Filed, under authority of the order of the Senate of April 10, 1974

U.S. GOVERNMENT PRINTING OFFICE
31-669 O WASHINGTON : 1974

V. LEGISLATIVE HISTORY

Background: S. 2589

S. 2589, the predecessor to S. 3267, was introduced on October 18, 1973, as a measure to prepare the Nation to deal with impending fuel shortages. The Senate began consideration of S. 2589 on November 14, 1973. Debate and consideration was continued on November 15 and 16 and the bill was passed by rollcall vote (78–6) on November 19, 1973. On December 14, 1973 the House passed a companion bill, H.R. 11882.

A House-Senate committee of conference met December 17, 18, 19 and 21. The Conference Report was taken in the Senate on December 21, 1973, but adoption of the Conference report was delayed by extended debate on the provisions of the bill. Discussions on the bill focussed on provisions prohibiting windfall profits and price gouging, and requiring Congressional oversight of executive actions taken under the Act.

Compromise Attempt

In an attempt to move the urgently needed measure before the Christmas recess, a modified version of S. 2589, was added as an amendment to S. 921, the Wild and Scenic Rivers bill, previously passed by the House. That amendment was passed by a vote of 52–8 and S. 921, as amended, was sent to the House. Three separate House Resolutions which would have suspended the rules and allowed House consideration of S. 921 as amended failed to pass the evening of December 21, 1973. The first session of the 93d Congress adjourned on December 22 without acting on the substance of S. 2589.

The Senate resumed consideration of the Conference Report on January 24, 1974. On January 29, by a vote of 57–37, the Senate recommitted the Conference Report to the Conference Committee. Conferees met on February 4, 5 and 6, 1974 and on February 6 agreed to file a modified conference report. The significant modification in this second Conference Report was the replacement of the provision to prohibit windfall profits with one which required a "rollback" in domestic crude oil prices. The modified conference report was filed in the Senate February 6, 1974, and considered February 17 and 18, 1974 and adopted on February 19, 1974 by a vote of 67–32. On February 27, 1974 it was adopted by the House by a vote of 258–151 and sent to the President. On March 6, 1974 the bill was vetoed by the President.

The veto message cited objections to provisions of the bill which provided for reducing crude oil prices, providing federal aid to those unemployed by the energy crisis, and the granting of loans to homeowners and small businesses for energy conservation purposes. The Senate failed to override the veto, by a vote of 58–40 on March 6, 1974.

Negotiations with Administration

Following President Nixon's veto on March 6 of S. 2589, the Energy Emergency Act, and the Senate's failure to override the veto, a series of discussions and negotiations on the substance of the bill were undertaken with the White House and Administration representatives at the request of Representative Staggers. Senator Jackson and Senator Fannin represented the Committee at these negotiations.

These discussions continued for approximately two weeks and led to agreement on the substance of an emergency authorities bill, with the following exceptions: (1) unemployment benefits, (2) repeal of the stripper well exemption from price control authority, (3) petroleum price controls, (4) protection of franchised dealers and distributors, and (5) delegation of authority to the President rather than the Administrator of FEO.

The discussions were terminated when it became apparent that fundamental policy differences on these five issues would make full agreement impossible.

Introduction of S. 3267

On March 28, 1974, Senator Jackson and Representative Staggers introduced companion bills (S. 3267 and H.R. 13834) which incorporated the changes discussed in negotiations with the Administration as well as the provisions on the subjects still in disagreement. The bills were identical except that H.R. 13834 did not contain petroleum price control authority (Section 128 of S. 3267).

As introduced, S. 3267 contained a number of authorizations similar to those which the President had requested in other Administration bills. These included authorization for rationing, conservation plans and funding for grants to States; energy data and information authority; special unemployment assistance programs; authorization for conversion from oil and gas to coal by power plants and heavy industrial users; and amendments to the Clean Air Act.

Differences between S. 3267 and S. 2589

S. 3267 as introduced was essentially identical to the conference report on S. 2589, except for the following changes:

The title and other changes were made to modify the bill from an "emergency" bill into a "standby emergency authorities and contingency planning" bill.

Authorization for FEA was deleted in view of the imminent passage of separate legislation to create that agency.

Rationing authority was made subject to Congressional review and right of veto.

The price rollback provision was deleted and instead, the President was required to set and justify price ceilings.

The unemployment assistance section was modified to deal with technical and definitional questions.

Loans to homeowners and small businesses were deleted.

Section on authorization for use of Federal facilities was deleted.

Energy data and information section was modified.

A requirement for contingency plans to deal with energy shortages was added.

Many of these changes represented efforts to deal with problems raised by Administration representatives in the course of the discussions described above.

The Committee met in executive session on April 1 and reviewed the differences between S. 3267 and the conference report on S. 2589.

Hearings were held on April 4, 1974 at which time testimony was received from Mr. William N. Walker, General Counsel, Federal Energy Office and Mr. Charles Owens, Deputy Assistant Administration for Policy, Planning and Regulation, Federal Energy Office. In addition, a statement of Mr. William E. Simon, Administrator,

Federal Energy Office, was accepted for incorporation in the hearing record. Other statements for the record were received from Mr. Robert M. Barsky, Deputy Air Pollution Control Officer, Los Angeles County Air Pollution Control District and from Mr. Albert A. Walsh, President National Realty Committee. In all, a cumulative total of five days of hearings were help on the provisions of S. 2589 and S. 3267.

Committee Amendments

An Executive mark-up session of the Committee was held on April 4, 1974 and on the conclusion thereof the Bill was ordered reported with an amendment in the nature of a substitute. Changes in the bill as introduced were as follows: Section 128, providing for petroleum pricing authority, and Title II, which amended the Clean Air Act were deleted without prejudice; a new subsection 101(c) was added requiring a presidential finding to be made before certain authorities granted under the Act could be exercised; technical and clarifying amendments.

* * * * * * *

ADDITIONAL VIEWS OF SENATORS FANNIN, HANSEN, McCLURE, AND BARTLETT

The Standby Energy Emergency Authorities bill (S. 3267) as ordered reported by the Interior Committee, simply fails to respond in a meaningful and constructive way to the Nation's energy problem. The bill does not contain authorities in a reasonable form that are needed on a standby basis to deal with the energy problem.

It contains virtually all of the infirmities of its predecessor, S. 2589, and none of its few redeeming features such as the air quality amendments. Thus, we here repeat the portions of the precise text of our additional views which appeared in the report on S. 2589.

> "During the year 1973 the Senate Interior Committee has reported six major bills affecting energy. These are: (1) S. 268, the Land Use Policy and Planning Assistance Act; (2) S. 425, the Surface Mining Reclamation Act; (3) S. 1570, the Emergency Petroleum Allocation Act; (4) S. 1081, the Federal Lands Right-of-Way Act; (5) S. 2176, the National Fuels and Energy Conservation Act; and (6) S. 2589, the National Energy Emergency Act.
>
> Two of these, the Federal Lands Right-of-Way Act and the National Energy Emergency Act, are related in part to increasing energy supplies. What we very much regret is that neither instance are the workings of the marketplace utilized to stimulate an increase in energy supplies.
>
> Only by facing the hard necessity of freeing up the price structure can we stimulate the new high-risk investment and encourage the conservation of energy that together are required to narrow the gap between supply and demand.
>
> What all of these bills do have in common is a philosophical bent toward the increase of Federal regulation, whether in the area of energy-producing or energy-consuming activities. Such regulation takes the form of elaborate formulas and procedures spelled out in legislative language. These provisions are likely to repeat the mistakes made in Federal regulation of natural gas production and in oil import quotas."

Notwithstanding its repetitive inadequacies, we voted to report it because we believe our colleagues should once again be given the opportunity to vote against it.

The Senate has a continuing opportunity to take legislative steps that will contribute to a constructive, meaningful solution to the Nation's energy problem. A number of Administration-supported bills including deepwater ports, natural gas deregulation, and others need to be acted on in a timely, responsible way. These are the legislative authorities that are now needed; not those contained in this warmed over standby energy emergency authorities bill.

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The following is an analysis of those provisions of the bill that are extraordinarily objectionable. It should be recognized as well that provisions of the bill not specifically addressed as objectionable are either duplicative of existing statutes (e.g., Section 113 Exports, Section 115, Carpools) or of questionable need on a standby or current basis.

* * * * * * *

Section 105

Provides authority to direct the conversion of power plants using natural gas and petroleum products to use coal if such plants have the capability and necessary equipment to burn coal.

This authority, if exercised by the Administrator, would place the operators of power plants in violation of clean air quality requirements making them subject to legal action. Without a provision that authorizes suspension of air quality requirements when conversion to coal is required, this authority conflicts with other law and places the Administrator in the position of requiring an action that is in violation of requirements under the Clean Air Act.

Some companies have already voluntarily responded, where they were physically able to do so, in undertaking conversions of this kind. This provision as written would have so little practical effect that it can be shown eventually to have been meaningless. The case could be made that the Congress thus had an opportunity to do something meaningful, was urged by the Administration to do it and failed to produce results.

This section limits the authority to order conversion of plants to those where "necessary equipment is available" on the date of enactment of the Act. This is too restrictive since some plants which could reasonably be converted to coal would not have *all* the necessary equipment available on the date of enactment of the bill.

MINORITY VIEWS OF SENATOR BUCKLEY

I support the additional views of my colleagues Senators Fannin, Hansen, McClure and Bartlett with the exception of their comments on the coal conversion and related amendments to the Clean Air Act. It was for the same criticisms expressed above by my colleagues that I voted against reporting the bill.

James L. Buckley.

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 93-1014

STANDBY ENERGY EMERGENCY AUTHORITIES ACT

APRIL 29, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 13834]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 13834) to provide standby emergency authority to assure that the essential energy needs of the United States are met, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts a substitute text which appears in italic type in the reported bill.

Background of Committee Consideration

This legislation finds its beginnings in the effort to devise a legislative response to the energy emergency which confronted this nation in the beginning months of this last winter. At that time, this nation was confronted with an energy supply problem of unprecedented scope.

On October 17, 1973, Arab oil producing nations, then engaged in armed conflict with Israel, initiated a program to curtail their collective crude oil production in an attempt to influence U.S. policy in the Middle East. Shortly thereafter a total embargo was imposed on shipments to the United States and steps were taken to prevent this nation from indirectly acquiring Arab produced crude oil or refined products derived from such production. Even before this, our nation had drawn down its primary inventories of gasoline, distillates and heavy fuel oil to a point which, on October 26, 1973, was reported to be 71 million barrels below normal. Also, crude oil stocks were 14 million barrels below normal levels for that date. In further exacerbation of the problem, the Arab countries reduced total production by five to six barrels per day, resulting in world shortages of petroleum supplies, thus intensifying competition for non-Arab production in the international market.

The Arab nation oil embargo brought to crisis proportions a situation already grave for individual and industrial consumers in the United States. In the past two decades, our energy demand had virtually exploded. Total energy consumption more than doubled from 37,000 trillion BTU's in 1950 to 76,000 trillion BTU's in 1973. Of this latter amount, only 62,000 trillion BTU's were produced domestically. U.S. consumption of energy was far outstripping domestic production. As a consequence the Department of Interior had—prior to the Arab embargo—predicted that this nation would have to dramatically increase imports of distillates by 250,000 barrels per day in order to get through a normal winter and by 400,000 barrels a day should we experience colder weather or a breakdown in refinery capacity.

The Committee believed that this situation clearly established a need to take emergency actions. Legislation was readied and reported to the Floor of the House on December 10, 1973. This bill, H.R. 11450, (later to become S. 2589—the Energy Emergency Act) contained a comprehensive package of emergency powers to cope with the then impending crisis situation. House passage was secured on December 14, 1973 and an initial conference with the Senate concluded on December 21; but the Senate failed to act on the terms of the conference agreement prior to recessing on the 22nd. On January 29, 1974, the Senate recommitted the conference report. Conferees resumed discussions and reached a new agreement which was accepted by both Houses of Congress and sent to the President. On March 6, 1974, the President vetoed the bill and the Senate failed in its effort to override the veto.[1]

[1] The veto message cited objections to provisions of the bill which provided for reducing crude oil prices, providing Federal aid to those unemployed as a result of the energy crisis, and the granting of loans to homeowners and small businesses for energy conservation purposes.

Convinced that the need for the legislation remained, discussions were initiated with the Administration and the leadership of both House and Senate Committees. These discusssions continued for approximately two weeks but concluded without resolution. Fundamental policy differences continue to divide the Administration and the jurisdictional committees of the Congress.

On March 28, 1974, Chairman Staggers introduced H.R. 13834 which represented the final product of the negotiations with the Administrgtion. This bill, while containing a number of proposals with which the Administration continued to disagree, incorporated several powers and changes in existing law which the President had requested in a series of Administration bills. These included the authority to ration petroleum products; to implement mandatory conservation programs; to provide grants to states to carry out delegated functions under the Petroleum Allocation Act; to obtain energy data and information; and, to order certain major fuel burning installations to convert to coal. Also included were amendments to the Clean Air Act of a similar but more limited scope then requested by the Administration.

Hearings were held on the introduced bill on April 2, 3, and 4th before the Full Committee. On April 25, 1974, after six days in markup an amended form of H.R. 13834 was ordered to be reported by voice vote of the Committee. Deleted from the bill were those sections pertaining to energy information reports, mandatory coal conversion of major fuel burning installations, and those parts of the bill which proposed amendments in the Clean Air Act. These provisions were combined in a separate bill also reported by the Committee, H.R. 14368. In splitting the legislation in this manner, the Committee proposes to expedite consideration of these proposals in the House.

* * * * * * *

STATEMENT OF WILLIAM E. SIMON, ADMINISTRATOR, FEDERAL ENERGY OFFICE, BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, HOUSE OF REPRESENTATIVES, APRIL 3, 1974

Mr. Chairman, members of the Committee. We thank you for this opportunity to appear before the Committee and to offer our comments on the proposed "Standby Energy Emergency Authorities Act". We are very appreciative of the considerable time and effort which Congress, and particularly this Committee has invested in this particular piece of legislation as well as its predecessor, the Energy Emergency Act.

In November when this Committee began formal hearings on the energy emergency bill, this country was faced with a set of external circumstances—the most important of which was the Arab oil embargo—that required immediate legislative action. Throughout November and December 1973 the Administration and Congress worked feverishly to work out a compromise energy emergency bill which would give the President the authority he needed to deal with the then burgeoning energy crisis. As we all know these efforts met with little success.

In his January 23, 1974 energy message to Congress the President warned that he would have difficulty signing the version of the energy emergency bill then pending before the House and Senate Conference Committee. In that message the President emphasized that the omnibus bill being proposed by Congress contained many extraneous and unnecessary provisions which the Administration found unacceptable. The President urged Congress to enact a direct and straightforward bill which would make necessary changes in the Clean Air Act and give the President the authority to impose energy conservation measures, to require selected industrial plants to utilize coal as their primary fuel, and to institute a rationing program if all other attempts to restrain the demand for petroleum failed. At the same time, the President urged Congress to give immediate but separate consideration to bills designed to prevent windfall profits from the energy crisis, to authorize the acquisition and mandatory reporting of energy information, to strengthen our unemployment compensation program to provide adequate coverage to those in need, including those unemployed as a result of the energy crisis, and to establish a Federal Energy Administration to coordinate and administer various energy initiatives.

As you are well aware, the President concluded that the Energy Emergency Act would have been counterproductive and he returned it to the Congress without his signature on March 6, 1974. Among the specific provisions of the Act cited by the President in his veto message as being particularly objectionable were the roll-back of domestic crude oil prices, the unworkable provision dealing with energy-related unemployment, and the unnecessary and costly Federal loans to householders and small businesses to install insulation or storm windows and to purchase heating units.

All of this is now past history—water over the dam.

The circumstances that were present in November and which demanded legislation on a crash basis are no longer so acute. The Arab oil embargo has been relaxed, and with the cooperation of the American people and a certain amount of luck the Nation survived the crisis.

Conditions having now eased we believe that the type of legislative response needed today is far different from that which was needed last November. We feel very strongly that an omnibus energy emergency bill is no longer required. Rather we believe that what is now needed is prompt attention, by appropriate committees of Congress, to a number of individual legislative proposals focusing on specifically identified problems associated with both our near term problems and our longer term goal of energy self-sufficiency.

The Administration has transmitted to Congress a comprehensive package of 18 separate legislative proposals designed to provide a legislative basis under which this Nation can begin to solve its energy problems. While we are happy to offer comments on various provisions of the Standby Energy Authorities bill we would prefer and strongly urge Congress to give careful and detailed consideration to the individual measures which have been proposed by the Administration.

This is not to suggest that standby authority to impose rationing and other mandatory conservation measures is no longer required. Such authority is needed if we are to be adequately prepared to deal with any future crisis situation which may confront us. Indeed the Administration has submitted a bill—the Special Energy Act—which would authorize these specific actions. Nor do we mean to suggest that legislation is no longer needed to require plants to convert to coal or to amend the Clean Air Act. Rather we are merely suggesting that such measures are more properly considered and examined on their individual merits rather than as part of any omnibus energy bill.

Having said all this we now turn our comments to the Standby Energy Authorities bill. At the outset we would like to express our appreciation for the opportunity which was afforded us during the past two weeks to meet with members of the Committee and its staff to attempt to work out a compromise energy bill. We believe that these meetings were worthwhile and that they have yielded positive results. While the bill in its present form still contains a number of provisions which are seriously objectionable to FEO and to the Administration, we are pleased that several of the provisions which prompted the President's veto of the Energy Emergency Act have now been deleted.

Since early November the Administration has consistently urged Congress to enact a straightforward energy emergency bill devoid of unnecessary provisions and designed to give the President four primary tools with which to attack the energy crisis. First, the authority to impose mandatory energy conservation measures. Second, standby authority to institute a rationing program in the event it became necessary. Third, authorization to require selected industrial plants to convert to coal as their primary fuel. Fourth, amendments to the Clean Air Act which would provide the necessary authority to relax environmental regulations on a temporary basis, thus permitting an appropriate balancing of environmental interests and energy requirements. The first two would clearly be provided by the present bill. The third and fourth would provide part of the authority needed but not all, and they would not obviate the broader treatment of the Clean Air Act that is now necessary. Furthermore, several extraneous provisions, some of which are particularly objectionable to the Administration, remain in the bill. Before commenting on these troublesome provisions, however, we would like to address briefly what we believe are the positive aspects of the bill.

Section 103 of the bill would give the President standby authority to institute a rationing program should he determine that all other methods of limiting energy demand have failed and that rationing has therefore become necessary. Let me stress that we do not believe that rationing will have to be imposed—certainly there is no likelihood of rationing in the forseeable future. Nevertheless, we strongly support this provision for the reasons indicated earlier.

One aspect of Section 103 however is troublesome—the requirement that congressional approval be given before any rationing plan can take effect. It seems to us that once a determination has been made by the President that the drastic step of rationing must be undertaken, it would be very unwise to delay the actual implementation of any such plan until Congress has time to deliberate. Although the bill specifically provides that a rationing plan can be put into effect if Congress has not acted on a proposed plan within 15 days, we believe that even a 15 day delay could have disastrous consequences. Conditions would continue to deteriorate while two weeks of debate raged and hoarders would have an additional 15 day grace period to stock up on scarce supplies.

Section 104 of the bill would authorize the Administrator of FEA to institute other mandatory conservation measures. While we support this section we must again object to the necessity of submitting individual conservation proposals to Congress for approval. The same reasoning as to why rationing plans should not be subject to congressional veto applies here with equal force. Another provision of Section 104 would limit the life of any conservation measure to six months. This limitation, when coupled with the possibility of a congressional veto, would make each conservation measure a "lame duck" before it is ever implemented.

Section 105 of the bill would grant authority to the Administrator of FEA to require selected plants to use coal as their primary source of energy. We support the objectives of this provision, but believe it should be amended to conform with the Administration's generally similar proposal. Specifically, the authority to require conversion should not be limited to those plants that have all necessary equipment available on date of enactment. This is unduly restrictive.

Title II of the bill would make certain desirable changes in the Clean Air Act. While we support what Title II seeks to accomplish, we believe that it does not go far enough and should be amended to conform to the Administration's recently proposed amendments to the Clean Air Act, or that Title II should be deleted from the bill entirely and immediate consideration given to enacting a separate bill along the lines which have now been proposed by the Administration. The latter course is preferable since the scope of Title II is not adequate to deal with the problems stemming from the Clean Air Act that must be addressed.

Section 122 is another one of the provisions of the Standby Energy Authorities Bill which we feel has merit. That section would authorize the Administrator of FEA to request, acquire, and collect—on a mandatory basis—energy information needed to assist him in the formulation of energy policy. As you know, the Administration has submitted to Congress a separate Energy Information Disclosure Bill designed to satisfy our long term and continuing need to be able to acquire and disseminate accurate energy information. We still

believe that the approach outlined in that bill is appropriate for our long-term data needs. However, since Section 122 is sufficiently similar to the Information Disclosure bill in most major respects—including the type of information to be gathered, the methods to be used and the sources to be tapped in acquiring information, and the proper protection and dissemination of energy information once it has been collected—we believe that Section 122 is acceptable in the context of the present legislation.

We turn now to those aspects of the bill that we consider seriously objectionable. At the outset, we note that the bill would vest authority for imposing mandatory conservation measures, for requiring certain plants to burn coal, for evaluating and adjusting domestic fuel supplies, as well as other provisions of the bill, in the Administrator of the FEA rather than in the President. Even the authority to develop and administer a rationing program which would be vested in the President pursuant to Section 103, would be taken from him and given to the Administrator once a Federal Energy Administration has been established. We are strongly opposed to this approach. Vesting such emergency authority in the Administrator of a single agency rather than in the President would serve not only to undercut the responsibility given the President by the Emergency Petroleum Allocation Act, the Economic Stabilization Act of 1970 and the Defense Production Act of 1950, but would also severely restrict the President's ability to deal with energy related problems in a flexible, deliberate, comprehensive, and effective manner. In addition Section 302 of the bill, which requires the President to submit to Congress a comprehensive report on the implementation of the Act and the Emergency Petroleum Allocation Act, is inconsistent with the other sections of the bill which require the Administrator rather than the President to submit numerous other reports. We strongly urge that the bill be amended so that all authority to deal wih energy related problems is vested directly in the President.

Section 114 of the bill would provide additional unemployment assistance to workers whose unemployment is the direct result of energy shortages. We believe it is desirable to provide temporary federally financed programs of special unemployment compensation during the energy shortage. However, we strongly oppose the approach taken by section 114 and by its predecessor, the vetoed Energy Emergency Act, which conditions a claimant's eligibility on a finding that his unemployment was actually caused by the energy shortage. The almost impossible administrative judgments which this approach would entail would inevitably lead to serious inequities in administration and disproportionately high administrative expenses. In short, the system would be both unfair and administratively unworkable.

The Administration has proposed an alternative approach which we believe will produce far more desirable results, in the form of Title II of the Job Security Assistance Act of 1974 (S. 3257). The Administration bill would provide for designation of areas of high unemployment and areas where unemployment has increased significantly. Extra benefits would be available to *all* eligible unemployed workers in these areas, regardless of whether their unemployment was directly attributable to energy shortages. This approach would at the same time provide greater direct aid to areas most affected by energy shortages, and be fair and administratively workable.

Section 109 of the proposed bill would forbid petroleum refiners and distributors from cancelling, refusing to renew, or otherwise terminating franchise agreements with retailers unless such retailers have failed to comply with an "essential and reasonable" requirement of their franchise and then only upon 90 days notice. Any retailer who has had his or her franchise terminated would be authorized to bring suit in a federal district court for damages or injunctive relief.

We sympathize with the position occupied by small retailers in their dealings with large refiners or distributors and would support the 90 day notice of termination requirement. We believe, however, that the nontermination provision itself goes overboard in trying to protect the interests of retailers and at considerable expense to the consumer. By freezing all franchise agreements indefinitely, section 109 would significantly reduce competition at the local retail level. Prospective applicants for franchises, willing to sell at lower prices or to provide better or more services, would be frozen out of the neighborhood market. In addition, there would be little incentive for those service stations already holding franchises to improve their level of services or to lower their prices. No outsider could challenge their position. Over the long run, we believe the consumer would suffer significantly were the status quo "locked in" as would be the case under section 109.

We are also concerned that a very large burden would be placed on federal courts if retailers were permitted to sue refiners or distributors in federal court. If section 109 in its present form is enacted, every contractural dispute between a local service station and its distributor could end up in the federal court. In addition courts would be saddled with the difficult task of determining in each instance whether an "essential and reasonable" term in the franchise has been breached by the service station.

This concludes our statement.

CHAPTER 5

S. 3287, Administration's Proposal

NOTE

The Administration's letter transmitting to Congress the Clean Air Act Amendments of 1974 can be found on page 30 of House Report No. 93–1013 to accompany H.R. 14368. (See p. 272.)

93D CONGRESS
2D SESSION

S. 3287

IN THE SENATE OF THE UNITED STATES

APRIL 2, 1974

Mr. BAKER (for himself and Mr. BUCKLEY) (by request) introduced the following bill; which was read twice and referred to the Committee on Public Works

A BILL

To amend the Clean Air Act as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Clean Air Amendments of 1974".

EXTENSION OF ACT

SEC. 2. Section 104 of the Clean Air Act is amended by striking "and $150,000,000 for the fiscal year ending June 30, 1974" and inserting in lieu thereof ", $150,000,000 for the fiscal year ending June 30, 1974, $150,000,000 for the fiscal year ending June 30, 1975, and $150,000,000 for the fiscal year ending June 30, 1976".

Section 212 of such Act is amended by striking "three succeeding fiscal years." and inserting in lieu thereof "five succeeding fiscal years.".

Section 316 of such Act is amended by striking "and $300,000,000 for the fiscal year ending June 30, 1974" and inserting in lieu thereof ", $300,000,000 for the fiscal year ending June 30, 1974, $300,000,000 for the fiscal year ending June 30, 1975, and $300,000,000 for the fiscal year ending June 30, 1976".

EXTENSIONS FOR TRANSPORTATION CONTROL PLANS

SEC. 3. Section 110 of the Clean Air Act is amended by adding subsection (g) as follows:

"(g) (1) Upon application by the Governor of a State on or after June 1, 1976, the Administrator may extend for not more than five years the deadline for attainment of national primary ambient air quality standards where transportation control measures are necessary for the attainment of such standards, and where the implementation of such control measures would have serious adverse social or economic effects.

"(2) The Administrator may consider extension applications for only those air quality control regions in which the State has—

"(A) implemented or will have begun implementing by June 1, 1977, the requirements of the applicable

plan with respect to stationary source emissions of transportation-related pollutants and all reasonably available measures of the applicable transportation control plan;

"(B) completed a detailed planning study that evidences public and local governmental involvement and includes examination of alternative measures and combinations of measures which could be used to attain and maintain the standards after June 1, 1977, a description of projects to be undertaken together with timetables and resource requirements, and identification and analysis of social, economic, and environmental effects including public health effects of such measures and projects.

"(3) Each extension application shall be accompanied by adequate documentation of compliance with the requirements of paragraph (2) above, and shall include an implementation plan for the extension period requested. The plan shall—

"(A) identify the remaining emission reductions necessary for attainment of the national primary ambient air quality standards and the reasonably available measures to be implemented to accomplish these reductions;

"(B) provide for the implementation of all reasonably available control measures as expeditiously as practicable;

"(C) identify the financial and manpower resources to be committed to carrying out the plan;

"(D) demonstrate (i) attainment of the national primary ambient air quality standards as expeditiously as practicable but no later than May 31, 1982, or (ii) that such attainment is not possible within the extension period despite implementation of all reasonable available and achievable control measures.

"(4) (A) Within one hundred and twenty days following the submission of an application and all supporting materials, and after providing an opportunity for public comment, the Administrator shall grant an extension, if he determines that the requirements of this subsection have been met.

"(B) If the Administrator determines that the requirements of this subsection have not been met, including findings relating to the impacts of the transportation control measures upon the social, economic, and environmental welfare of the air quality control region, he shall notify the Governor of deficiencies in the application, including his judgment as to acceptable dates for implementing measures included in the plan and as to the appropriate duration of an extension. The notification shall also specify a date for the submission of a revised application.

"(5) Where the Administrator grants an extension based on an application meeting the requirements of sub-

paragraph (g) (3) (D) (ii), the Governor of the State may, on or after June 1, 1981, apply for a further extension in accordance with and subject to the requirements of this subsection. No extension under this paragraph may extend beyond May 31, 1987.

"(6) Where the Administrator denies an extension application or where the Governor of a State in which the national primary ambient air quality standards are not being met does not submit an application under this subsection, the Administrator may, after consultation with appropriate State and local elected officials, propose and promulgate an implementation plan (or portion thereof) meeting the requirements of this subsection.

"(7) No transportation control measures which would have serious adverse social or economic effects shall be considered 'reasonably available'.".

NEW SOURCE AND HAZARDOUS EMISSION EQUIPMENT STANDARDS

SEC. 4. Section 111(a)(1) of the Clean Air Act is amended to read as follows: "The term 'standard of performance' means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into consideration the cost of achieving such emission limitation, and any nonair quality

environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, he may instead prescribe a design or equipment standard meeting the requirements of this paragraph. Such standard shall to the degree possible set forth the emission reductions achievable by implementation of such design or equipment, and shall provide for compliance by means which achieve equivalent results.".

Section 111(b)(5) is added as follows:

"(b)(5) The Administrator shall, upon petition by the owner or operator of any source subject to a design or equipment standard under this section, restate such standard as an emission standard requiring the equivalent control if he determines that the requirements of the second sentence of paragraph (a)(1) are no longer satisfied with respect to that class of sources. The owner or operator of any source which commenced construction while the design or equipment standard was applicable may elect to comply with this section by means of such design or equipment or by meeting such emission standard."

Section 111(d) of such Act is amended by deleting the

term "emission standards" where it appears and inserting in lieu thereof the phrase "emission, design, or equipment standards.".

Section 112 (a) (2) of such Act is amended by deleting the term "an emission" and inserting in lieu thereof the word "a".

Section 112 (b) (1) (A) of such Act is amended by deleting the term "an emission" and inserting in lieu thereof the word "a".

Section 112 (b) (1) (B) of such Act is amended by inserting in the first sentence after the phrase "for such pollutant" the phrase "or standards regarding the composition of materials which emit such pollutant" and by deleting in the second sentence the term "an emission" and inserting in lieu thereof the word "a".

Section 112 (b) (1) (B) of such Act is further amended by adding a fourth sentence as follows: "If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, he may instead prescribe a design or equipment standard meeting the requirements of this paragraph. Such standard shall to the degree possible set forth the emission reductions achievable by implementation of such

design or equipment, and shall provide for compliance by means which achieve equivalent results.".

Section 112 (b) (3) is added as follows:

"(b) (3) The Administrator shall, upon petition by the owner or operator of any source subject to a design or equipment standard under this section, restate such standard as an emission standard requiring the equivalent control if he determines that the requirements of the fourth sentence of paragraph (b) (1) (B) are no longer satisfied with respect to that class of sources. The owner or operator of any source which commenced construction while the design or equipment standard was applicable may elect to comply with this section by means of such design or equipment or by meeting such emission standard."

Section 112 (c) (1) (A) of such Act is amended by deleting the phrase "cause emissions in violation of" and inserting in lieu thereof the word "violate".

Section 112 (c) (1) (B) of such Act is amended by deleting the phrase "no air pollutant to which such standard applies may be emitted from any stationary source" and inserting in lieu thereof the phrase "no stationary source to which such standard applies shall operate".

Section 112 (d) (1) of such Act is amended by deleting the word "emission".

Section 112 (d) (2) of such Act is amended by deleting the word "emission".

Section 114 (a) of such Act is amended by deleting the word "emission".

WAIVERS FOR TECHNOLOGY INNOVATIONS

SEC. 5. Section 111 of the Clean Air Act is amended by adding subsection (f) as follows:

"(f) (1) The owner or operator of a new source may request the Administrator for authorization to attempt to meet applicable performance standards under this section by means of a system or systems of emission reduction which have not been determined by the Administrator to be adequately demonstrated. After consulting with appropriate State and local officials, the Administrator may grant such authorization if he determines, based upon an evaluation of designs, specifications, plans, emission calculations, and other relevant factors that—

"(A) there is substantial likelihood that the proposed system or systems will enable the source to comply with the applicable standard, and

"(B) the proposed system has substantial potential for achieving significantly greater emission reduction than that required by the applicable standard, or achieving the required reduction at significantly lower cost, in

terms of economic or environmental impact, than the systems which have been determined by the Administrator to be adequately demonstrated.

"(2) An authorization under this subsection shall extend to a date determined by the Administrator, after consultation with the source owner or operator, taking into consideration design, installation and capital costs of the systems being evaluated.

"(3) The granting of an authorization under this section shall preempt Federal, State, and local regulation of air pollutant emissions of the source, with respect to the affected facility and air pollutants covered by the authorization, except that the Administrator shall impose such requirements as necessary for the attainment or maintenance of a national primary ambient air quality standard. Any such preemption shall not extend beyond any period specified under paragraph (2)."

ASSESSMENT OF CIVIL PENALTIES

SEC. 6. Section 113(b) of the Clean Air Act is amended as follows:

"(b) The Administrator may request the Attorney General to commence a civil action for a permanent or temporary injunction or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both, whenever any person—

"(1) violates or fails or refuses to comply with an order issued under subsection (a); or

"(2) violates any requirement of an applicable implementation plan during any period of federally assumed enforcement or more than thirty days after having been notified by the Administrator under subsection (a)(1) of a finding that such person is violating such requirement; or

"(3) violates section 111(e) or 112(c); or

"(4) fails or refuses to comply with any requirement of section 114.

Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation, require such compliance, and assess such penalty. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency."

ENFORCEMENT ORDERS EXTENDING PAST ATTAINMENT DATES

SEC. 7. Section 113(a)(4) of the Clean Air Act is amended by deleting the third sentence and inserting the following in lieu thereof: "Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance (which may

be subsequent to the date for attainment of a national ambient air quality standard under section 110) which the Administrator determines is as expeditious as practicable, taking into account the seriousness of the violation and the status of efforts to comply with applicable requirements. Any order specifying a compliance date later than such national standard attainment date shall require the source to employ any interim measures of control which the Administrator determines are reasonably available. In cases where the Administrator determines that the need for a compliance date beyond such national standard attainment date results in whole or in part from the lack of good-faith efforts to comply with the applicable requirements, he shall initiate action to impose civil and/or criminal penalties.".

Section 113 of such Act is amended by adding subsection (d) as follows:

"(d) An enforcement order or variance submitted by a State which specifies a date for compliance later than the date for attainment of national ambient air quality standards under section 110 may be approved by the Administrator if the Administrator determines that (1) such compliance date is as expeditious as practicable, and (2) the order or variance requires the source to employ interim measures of control which are reasonably available.".

Section 113(b)(1) of such Act is amended to read as follows:

"(1) violates or fails or refuses to comply with any order issued under subsection (a) or any order or variance approved under subsection (d); or".

Section 113(c)(1)(B) of such Act is amended to read as follows:

"(B) violates or fails or refuses to comply with any order issued by the Administrator under subsection (a) or any order or variance approved by the Administrator under subsection (d), or".

Section 304(b)(1) of such Act is amended by adding a new subparagraph (C) as follows:

"(C) Where the Administrator has issued an order pursuant to section 113(a) or approved an order or other action pursuant to section 113(d).".

TEMPORARY SUSPENSIONS OF STATIONARY SOURCE EMISSION AND FUEL LIMITATIONS

SEC. 8. The Clean Air Act is amended by adding section 119 as follows:

"SEC. 119. (a)(1) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before November 1, 1974, temporarily suspend any stationary source fuel or emission

limitation as it applies to any person, if the Administrator finds that such person will be unable to comply with such limitation during such period solely because of unavailability of types or amounts of fuels. Any suspension under this paragraph and any interim requirement on which such suspension is conditioned under paragraph (2) below shall be exempted from any procedural requirements set forth in this Act or in any other provision of local, State, or Federal law. The granting or denial of such suspension and the imposition of an interim requirement shall be subject to judicial review only on the grounds specified in paragraphs (2) (B) and (2) (C) of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304 (a) (2) of this Act.

"(2) Any suspension under paragraph (1) above shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall not be construed to preclude use of alternative or intermittent control measures which the Administrator determines are reliable and enforceable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the source receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary; (B) such measures as the Administrator de-

termines are necessary to avoid an imminent and substantial endangerment to health of persons; and (C) requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available to that person (as determined by the Administrator): *Provided*, That such fuel shall not be required to be used if the Administrator determines that the cost of changes necessary to use such fuel during such period is unreasonable.

"(b) (1) After public notice and public hearing, the Administrator may, for any period beginning after November 1, 1974, and ending not later than January 1, 1980, temporarily suspend any stationary source fuel or emission limitation as it applies to any fuel burning stationary source if the Administrator finds—

"(A) that such source is prohibited from using petroleum products or natural gas as fuel by reason of an order issued under section 120 of this Act,

"(B) that such suspension (in conjunction with interim requirements under paragraph (4) below) will not, after the applicable implementation plan deadline, result in or contribute to a level of air pollutants which is greater than that specified in a national primary ambient air quality standard, and

"(C) that such source has been placed on a schedule which provides for the use of methods which the Administrator determines will assure continuing compliance with the stationary source fuel or emission limitation as soon as practicable (but no later than January 1, 1980).

"(2) (A) Any schedule under subparagraph (b) (1) (C) shall include increments of progress toward compliance with such limitation by such date including but not limited to a date by which a contractual obligation shall be entered into for an emission control system which has been determined by the Administrator to be adequately demonstrated. In the case of a person wishing to construct and install such system himself, the Administrator may approve detailed plans and specifications and increments of progress for construction and installation of such a system. Before the earliest date on which a source is required to take any action under the preceding sentences (but not later than May 15, 1977) any source may elect to have the preceding sentences not apply to it; but if such election is made, no suspension under this section may apply to such source after May 15, 1977.

"(B) For purposes of subparagraph (b) (1) (B) and of paragraph (b) (4), the term 'applicable implementation plan deadline' means the date on which (as of the date of enactment of this Act) a national primary ambient air qual-

ity standard is required by an applicable implementation plan to be attained in an air quality control region.

"(3) Any person may obtain judicial review of a grant or denial of a suspension grant under this paragraph and of any interim requirement on which such suspension is conditioned under subsection (b) (4) by filing a petition with the United States district court for any judicial district in which is located any stationary source to which the action of the Administrator applies. The second sentence of clause (ii), and clauses (iii) and (iv) of section 206 (b) (2) (B) of this Act shall apply to judicial review under this paragraph. No proceeding under section 304 (a) (2) may be commenced with respect to any action under this paragraph.

"(4) Any suspension under paragraph (1) above shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall not be construed to preclude use of alternative or intermittent control measures which the Administrator determines are reliable and enforceable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the source receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary; (B) such measures as the Administrator

determines are necessary (i) to minimize emissions which materially contribute to a significant risk to the health of persons prior to the applicable implementation plan deadline, or (ii) to assure maintenance of the national primary ambient air quality standards during any portion of any such suspension which may extend beyond such deadline; and (C) requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available to that source (as determined by the Administrator): *Provided*, That such fuel shall not be required to be used if the Administrator determines that the cost of changes necessary to use such fuel during such period is unreasonable.

"(c) No State or political subdivision may require any person to whom a suspension has been granted under subsection (a) or (b) to use any fuel the unavailability of which is the basis of such person's suspension (except that this preemption shall not apply to requirements identical to Federal interim requirements under subsection (a) or (b) or a compliance schedule under subparagraph (b) (1) (C) (including any requirement under subparagraph (b) (2) (A)).

"(d) (1) It shall be unlawful for any person to whom a suspension has been granted under subsection (a) or (b)

to violate any requirement on which the suspension is conditioned.

"(2) It shall be unlawful for any person to fail to comply with a schedule of compliance under subparagraph (b) (1) (C) (including any requirement under subparagraph (b) (2) (A)).

"(e) For purposes of this section:

"(1) The term 'stationary source fuel or emission limitation' means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under this Act (other than section 303, 111 (b), or 112) or contained in an applicable implementation plan and which is designed to limit stationary source emissions resulting from combustion of fuels, including a prohibition on or specification of the use of any fuel of any type or grade or pollution characteristic.

"(2) The term 'stationary source' has the same meaning as such term has under section 111 (a) (3).

"(f) Nothing in this section shall affect the power of the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.

COAL CONVERSION AND ALLOCATION

SEC. 9. The Clean Air Act is amended by adding section 120 as follows:

"(a) The President may, to the extent practicable and consistent with the objectives of this Act and any legislation relating to the production, conservation, distribution, or allocation of energy or energy resources by order, after balancing on a plant-by-plant basis the environmental effects of use of coal against the need to fulfill the purposes of such legislation relating to energy or energy resources, prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this section, has the capability and reasonably available necessary plant equipment to burn coal. Any installation to which such an order applies shall be permitted to use coal or coal byproducts to the extent consistent with the provisions of section 119 of this Act, and, if such installation converts to the use of coal as fuel, it shall not until January 1, 1980, be prohibited by reason of the application of any air pollution requirement from burning coal which is available to such installation to the extent consistent with the provisions of section 119 of this Act. To the extent coal supplies are limited to less than the aggregate amount of coal supplies which may be necessary to satisfy the requirements of those installations which can be expected to use coal (including installations to which orders may apply under this subsection), the President shall prohibit the use of natural

gas and petroleum products for those installations where the use of coal will have the least adverse environmental impact in comparison with other uses of coal. A prohibition on use of natural gas and petroleum products under this subsection shall be contingent upon the availability of coal, coal transportation facilities, and the maintenance of reliability of service in a given service area. The President may require that fossil fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable of using coal as a primary energy source instead of or in addition to other fossil fuels. No fossil fuel-fired electric powerplant may be required under this section to be designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) if an adequate and reliable supply of coal is not available and is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the President shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

"(b) The President may by rule prescribe a system

for allocation of coal to users thereof in order to attain the objectives specified in this section."

REVIEW OF STATE IMPLEMENTATION PLANS

SEC. 10. The Clean Air Act is amended by adding section 121 as follows:

"(a) The Administrator shall promptly review all State implementation plans and revisions thereof and shall determine whether in the aggregate (1) available domestic supplies of fossil fuels, or (2) supplies of control systems, are adequate to enable applicable emission requirements, standards, or limitations to be met within the date set for attainment of a national ambient air quality standard under this Act.

"(b) If the Administrator determines pursuant to subsection (a) that such supplies are not adequate, he shall, in accordance with the procedural requirements of section 113(a)(4), extend or suspend deadlines for meeting State or local emission requirements or limitations, as he determines may be appropriate, on a source-by-source basis for any specific category or categories of sources. Any such extension shall be conditioned upon such interim requirements as the Administrator determines are necessary (1) to minimize emissions which materially contribute to a significant risk to the health of persons prior to the applicable implementation plan deadline, and (2) to assure

maintenance of the national primary ambient air quality standards during any portion of such extension which may extend past such deadline. Such interim requirements shall not be construed to preclude use of alternative or intermittent control measures which the Administrator determines are reliable and enforceable.

"(c) In determining which sources or classes of sources will be granted an extension, the Administrator shall consider (1) the ambient air quality of the region affected by the emissions of the individual source, (2) the availability of domestic low sulfur fossil fuel to the individual source, and (3) the effectiveness of individual extensions in reducing inadequacies determined to exist under subsection (2) of this section.

"(d) The extensions given under this section shall be designed to achieve national primary ambient air quality standards and, taken in the aggregate, to eliminate the deficit in domestic fossil fuels and compensate for shortages of control systems determined to exist under the provisions of subsection (a) of this section.

"(e) The term 'applicable implementation plan deadline' has the same meaning as such term has under section 119(b)(2)(B)."

APPLICABILITY OF THE NATIONAL ENVIRONMENTAL POLICY ACT

SEC. 11. The Clean Air Act is amended by adding section 122 as follows: "No action taken under section 120 of this Act shall, for a period of one year after initiation of such action, be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856). However, before any such action that has a significant impact on the environment is taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act. Any such action which will be in effect for more than a one-year period or any action to extend an action taken under section 120 to a total period of more than one year shall be subject to the full provisions of the National Environmental

Policy Act notwithstanding any other provisions of this Act."

AUTOMOBILE EMISSION STANDARDS

SEC. 12. Section 202 of the Clean Air Act is amended as follows:

Subsections (b) (1) (A) and (b) (1) (B) are amended to read as follows:

"(b) (1) (A) The regulations under subsection (a) applicable to emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen from light duty vehicles in model years 1975, 1976, and 1977 shall be the standards established in the Administrator's decision of April 11, 1973, under authority of this section and section 209. This shall include a nitrogen oxides emission standard of 3.1 grams per mile.

"(B) The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light duty vehicles and engines manufactured during or after model year 1978 shall contain standards which require a reduction of at least 90 per centum from emissions of carbon monoxide and hydrocarbons allowable under the standards under this section applicable to light duty vehicles and engines manufactured in model year 1970.".

Subsection (b) (1) of section 202 is further amended by adding the following subparagraph (C):

"(C) The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light duty vehicles and engines manufactured during or after model year 1978 shall be set at such level as the Administrator may determine appropriate after taking into account air quality, energy efficiency, availability of technology, cost, and other pertinent considerations. The Administrator shall publish for public comment no later than January 1, 1976, proposed standards and his tentative conclusions with respect to the matters he is required to consider under this subparagraph and shall publish final standards and his findings regarding such matters no later than November 30, 1976.".

Subsection (b) (5) is repealed.

INTRODUCTION AND STATEMENT ON S. 3287

By Mr. Baker (for himself and Mr. Buckley) (by request):

S. 3287. A bill to amend the Clean Air Act as amended and for other purposes. Referred to the Committee on Public Works.

Mr. Baker. Mr. President, I introduce the proposed Clean Air Act Amendments of 1974, which have been transmitted to the Congress by the Environmental Protection Agency on behalf of the administration. Without attempting to prejudge the course of action on these or other pending amendments to the Clean Air Act, I believe that they represent a reasonable effort by EPA to reconcile the conflicts which may arise between the very stringent requirements in the Clean Air Amendments of 1970 and a number of other economic and social factors. More significantly, the presentation of these proposed amendments by EPA indicates the successful reconciliation of a number of conflicting interests within the administration.

I shall not try to characterize these amendments. One of the amendments, for example, would give EPA authority to impose civil penalties of up to $25,000 per day for violation of any air quality requirements. Another would grant authority for a temporary suspension of emission limitation and for coal conversion, with appropriate safeguards. This would parallel our efforts in title II of the vetoed energy emergency bill to use domestic fuels that are plentiful, while avoiding or minimizing air pollution. Still others, like the authority in this bill for EPA to set design or equipment standards, and to provide a waiver of new source standards to encourage adoption of experimental control technology, may provide a more flexible and workable method for achieving clean air requirements.

One indication of the constructive and open dialog within the administration and with some of us in the Congress is shown by the fact that EPA has forwarded, without endorsement, two proposals other agencies wish to have considered. These relate to the possible use of intermittent control systems, and to the requirement for no significant deterioration of our Nation's air resources. While these two amendments are not contained within the package of amendments I am introducing today, I am confident that other Members may wish to consider them. I know they will be among items considered in the course of hearings by the Environmental Pollution Subcommittee of the Public Works Committee.

A central issue which must be addressed in the near furture is whether we will deal first with those amendments that relate to our energy needs, and then confront the longer-term issues, or consider all of the needed changes in one package later in the session.

The following is a list of the principal changes which would be accomplished by the amendments which EPA has submitted:

1. TEMPORARY SUSPENSIONS AND COAL CONVERSION

[Sec. 119 CAA and Sec. 2 ESECA]

EPA would have authority to grant temporary suspension of emission limits up to November 1974 and to order plants which are capable of burning coal to switch from oil or gas to coal and to continue to burn coal until 1980, with appropriate environmental safeguards.

2. REVIEW OF STATE IMPLEMENTATION PLANS

[Sec. 110(a)(3) CAA]

EPA would review State plans to see whether enough domestic fuel and control systems are available to meet emission limits by the present 1975 and 1977 statutory deadlines, and, if not, could issue enforcement orders to extend deadlines that are more stringent than would be needed to meet primary air quality standards. Interim safeguards would be used to protect primary standards during the extensions.

3. EXTENSION OF TRANSPORTATION CONTROL PLAN

[Sec. 3]

Areas that could not meet ambient standards for auto-related pollutants by the 1975–77 deadlines with reasonably available measures, would be able to win extensions of up to 5 years and, in extreme cases, an additional 5 years in order to achieve the national ambient standard.

4. NEW SOURCE AND HAZARDOUS EMISSION STANDARDS

[Sec. 4]

EPA would obtain explicit new authority to establish design or equipment standards where emission or performance standards do not prove to be feasible. This would clarify matters by setting simple uniform standards for all sources in a class.

5. WAIVER FOR EXPERIMENTAL CONTROL TECHNOLOGY

[Sec. 5]

EPA would have authority to waive compliance with new source performance standards where necessary to encourage sources to install control technology that requires additional research and demonstration.

6. CIVIL PENALTIES

[Sec. 110(C) CAA]

EPA could impose civil penalties of up to $25,000 per day for violations of air quality control requirements. This provides a sanction

when violations do not warrant criminal proceedings or when criminal prosecution would involve too many resources.

7. ENFORCEMENT ORDERS BEYOND STATUTORY DEADLINES

[Sec. 119 CAA]

EPA would acquire express authority to extend compliance schedules beyond the 1975–77 statutory dates, when a source agrees to install control equipment and to operate under interim control measures.

8. NATIONAL ENVIRONMENTAL POLICY ACT PROVISIONS

[Sec. 7(C) ESECA]

This would require the Federal Energy Office to file environmental impact statements on coal conversions or coal allocations which will extend for more than 1 year but exempt such filing for actions of less than a year's duration.

9. AUTO EMISSION STANDARDS

[Sec. 202(b) CAA]

This would extend the Federal model year 1975 interim emission standards through 1976 and 1977 model years, and permit EPA to set nitrogen oxide levels for subsequent years based on various specified criteria.

I am certain that the Environmental Pollution Subcommittee, under the able leadership of its chairman, (Mr. Muskie) and ranking minority member, (Mr. Buckley) will give careful and thorough consideration to these proposals, as they have to other environmental matters.

U.S. ENVIRONMENTAL
PROTECTION AGENCY,
Washington, D.C. March 22, 1974.

HON. GERALD R. FORD,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: I am pleased to forward to you a proposed bill, "The Clean Air Act Amendments of 1974", which is designed to improve the Federal-State program to achieve clean air.

Air pollution directly affects all of our citizens because of the adverse effects on their health and welfare and because of the increased costs they pay for goods and services. The Clean Air Act Amendments of 1970 have established a strong and effective program to protect the American public from the adverse health effects as well as other effects of air pollution. Under the 1970 law EPA has established air quality standards to protect health and welfare. The States have adopted and are implementing detailed programs to ensure compliance with the standards. The automobile industry has made significant progress in reducing motor vehicle emissions. States and localities are developing transportation control strategies that will not only help achieve higher air quality, but also reduce congestion and provide a more balanced transportation system. These are only illustrative of the major progress that the law has stimulated.

Now, with more than three years of experience, we are in a position to suggest some specific areas in which the law needs to be strengthened or made more workable. The amendments which we are suggesting are intended to improve upon the basic thrust of the Act and and to take into account new realities, particularly the energy problems which the Nation faces. They are also intended to deal realistically, but with continued firm commitment, with specific problems of inability to achieve the statutory deadlines for the ambient air quality standards in severe problem areas such as Los Angeles.

The cornerstone of the Clean Air Act is the establishment of Air Quality Standards designed to protect the Nation's health and welfare and development by the States of implementation plans to insure attainment of those standards by designated statutory deadlines.

We are suggesting three changes dealing with the statutory deadlines for air quality standards; first, to provide greater flexibility in dealing with transportation controls for those areas heavily impacted by motor vehicle pollution; second, to provide for EPA review of State implementation plans in order to encourage the use of clean fuels in geographic areas of most need; and third, when necessary, to temporarily extend compliance dates for certain stationary source fuel limitations.

To date, transportation controls have been proposed for 38 metropolitan areas. Many of these communities can achieve the national photochemical oxidant and carbon monoxide ambient air quality standards by mid-1977 through the application of new motor vehicle emission standards, stringent stationary source standards and in some cases, additional control efforts, such as institution of inspection and maintenance programs and greater use of mass transit and car pools. A number of communities, however, are so heavily impacted by motor vehicle-related pollutants that severe gasoline rationing would be necessary to achieve air quality standards within the statutory deadline, even after all other control measures were instituted.

We are proposing that for those communities where attainment of standards by 1977 would cause serious economic and social disruption, EPA be authorized to allow up to five additional years for compliance with the air quality standards. EPA would grant this extra time only if all reasonable control measures under existing plans have been or will be instituted. EPA would be authorized to provide a further five-year extension in those cases where it would not be possible to achieve compliance within the first five years. Providing additional time in appropriate cases will enable communities to attain the flexibility they need to develop the long-term transportation system solutions necessary to help meet air quality standards.

In developing implementation plans for sulfur oxides control, many States did not assess the aggregate impact of their regulatory requirements on available fuel supplies nationwide. Our projections indicate that there will be a shortage of low-sulfur content fuels as well as stack gas scrubbing technology, to meet the deadline in the Clean Air Act as required in State implementation plans.

In addition, we are proposing authority to permit EPA to issue enforcement orders beyond the statutory deadlines in the Act. In cases where the extension must be given to sources that have failed to make good faith efforts, EPA would be required to seek criminal or civil sanctions.

We are proposing a review of State implementaton plans to identify State emission regulations that require the use of lower sulfur fuel than is needed to meet the primary air quality standards. Based on this review, EPA could issue enforcement orders through the amendment discussed above, to the extent necessary to eliminate the anticipated clean fuels deficit. This would complement EPA's current voluntary program of encouraging revisions of State implementation plans to ensure that limited clean fuel supplies are available where needed to meet health-related primary standards. Neither the current program nor the proposed amendment woud infringe on the important principle that States have the prerogative to adopt and enforce more stringent controls if they choose to do so. Such revised schedules would ensure that the primary air quality standards would not be violated and that attainment of State and local standards will be achieved as soon as possible.

Enactment of this proposal would have the benefit of making scarce low-sulfur fuels and control hardware available first in urban areas where they are most needed, allowing for the allocation of low sulfur fuels and new technology in the most logical time sequence to meet our air quality objectives.

The Nation's energy supply problems have been exacerbated by greatly increasing demand which has resulted in dependence on foreign sources of crude oil. To reverse such dependence, it will be necessary for some oil burning power plants to convert to coal.

We are proposing both a short and long-term solution to deal with this problem. These proposals are similar to provisions contained in the recently vetoed Energy Emergency Act. One provision, virtually identical to that in the Energy Emergency Act, would provide authority for the President—through the Federal Energy Office—to mandate coal conversion. Accompanying this provision would be a limited exemption to the National Environmental Policy Act for such actions, which was also covered by the Energy Emergency Act. The exemptions would be for only one year and would require environmental analyses. The thrust of NEPA is protected since any long-term conversion would have to meet all the requirements of NEPA.

In cases where the Federal Energy Office has mandated coal conversion, the Administrator of EPA would have authority to temporarily suspend any emission standard or limitation in violation of primary air quality standards. Once the applicable deadline under the Clean Air Act is reached—either 1975 or 1977—the source would be required to achieve primary standards until June 20, 1980. At that time, the source would have to move beyond primary standards to the extent needed to achieve emission limitations in the original State implementation plan. The interim requirement to achieve primary standards is a departure from the provision in the Energy Emergency Act, which apparently would have allowed limited violations of the primary standard during the period between the implementation plan deadline and the final deadline for this authority.

Although EPA can establish Federal emission standards for new sources and also for sources emitting hazardous pollutants, there are occasions where emission limitations are not the most practical method of control. For example, emission standards are not appropriate in cases where emissions from a source are difficult to measure, such as hydrocarbon emissions from gasoline storage tanks, or in cases where application of a particular product may cause the problem, such as spraying asbestos. EPA is requesting authority to set design or equipment standards for new sources and hazardous pollutants whenever the limitations of measurement technology make emission limitations impracticable. Hence, the use of this new authority would be the exception.

Because the entire risk of innovative technology is borne by the owner of a source, there is a tendency in new source performance standards to freeze current technology. In order to encourage development of new technology by the private sector, we are proposing in certain exceptional cases to waive Federal, State, and local emission requirements where a source would use a new control technology which we believe will either offer significantly greater control of emissions or the same level of emissions as the new source performance standards at substantially reduced cost. Demonstration projects of this type would only be allowed where maintenance of the health-related air quality standards would not be jeopardized.

Currently, EPA is constrained to the use of criminal penalties to enforce stationary source standards and limitations. We are proposing to expand our enforcement authorities to include civil penalties—up to $25,000 for each day of violation. Because a very vigorous enforcement program will likely be required to achieve the objectives of the Clean Air Act, it is important that we have flexibility in the application of sanctions. In many cases, the greater flexibility of civil penalties will be a much more effective mechanism to encourage compliance than criminal penalties; in other cases, criminal penalties will be more appropriate.

In his January 23, 1974, message to the Congress on measures to deal with the energy crisis, the President made his recommendations for extending auto emission standards. He stated this proposal would "permit auto manufacturers to concentrate greater attention on improving fuel economy while retaining a fixed target for lower emissions. These changes can be made without significant effect on our progress in improving air quality." The attached language would extend HC and CO standards at the 1975 interim level for 1976 and 1977 NO_2 standards at 3.1 grams per mile for the same two years.

The final item of our proposed legislation would extend the authorizing authorities of the Clean Air Act for two additional years. Last year, the Congress extended the Act's authorizations to June 30, 1974, at the Fiscal Year 1973 levels of $475 million. We are proposing extending the Act for the next two fiscal years at

the $475 million level. This amount should be sufficient to carry forward the Nation's air pollution control program.

These above amendments have been discussed intensively throughout the Executive Branch and I support their enactment. There are, however, two proposals set forth in Attachments B and C which I do not support. Nonetheless, other Executive Branch agencies believe they are needed and I am therefore forwarding them for consideration by the Congress. These proposals concern "intermittent control systems" and "significant deterioration."

In support of the proposal permitting indefinite use of intermittent or alternative control systems, other agencies state that: (1) such systems will allow some utilities and industrial sources to meet ambient air quality standards at a cost significantly lower than the cost of continuous emission control systems and with a smaller energy penalty; (2) such systems involve less solid waste than some of the scrubber technologies; and (3) that use of such systems could encourage the coal industry to make greater investments in new mines. This proposal would permit the use of alternative or intermittent control measures indefinitely as long as they would meet national ambient air quality standards.

EPA's concern with intermittent control systems as a permanent control strategy rests heavily on information becoming increasingly available as to the effects on public health of the sulfates that are formed in the ambient air as a product of the sulfur oxide gaseous emissions. EPA studies indicate that measurable adverse health effects are present at ambient sulfate levels of 8–10 micrograms per cubic meter. These levels are exceeded in large parts of the country, particularly in the Midwest and Northeast. The permitting of uncontrolled emissions of sulfur dioxide except during periods of adverse meteorological conditions would be expected to contribute in a major way in ambient air sulfate loadings. In my opinion, therefore, amending the Act to encourage indefinite or intermittent control systems would be highly inappropriate, and could be more costly in the long run should new requirements to deal with sulfates force expensive retrofits.

Recent court interpretation of the Clean Air Act requires the Administrator of EPA to establish standards to prevent "significant deterioration" of air already cleaner than required by national ambient air quality standards designed to protect public health and welfare. In support of this proposal other agencies state that the effect of this interpretation is to extend the Federal regulatory authority beyond standards set to protect the public health and welfare and to establish a new criterion, namely the quality in a given area at the time the Act was passed. They feel that this extension of the Federal regulatory authority will limit the range of choice of State and local governments in economic development and land use matters to a degree deemed unnecessary and unwarranted. This proposal would remove the authority of the Federal government to promulgate standards more stringent than those set to protect public health or welfare, but would not remove the authority of State and local governments to establish and maintain air quality standards cleaner than required by the Federal government should they choose to do so.

As a result of extensive written comments, public hearings and interagency discussions, EPA believes that meaningful steps can be taken to protect areas with already high air quality through classification by the States of geographic areas into one of three general classes:

(1) Air quality area better than secondary standards in which only restricted growth would take place;

(2) Air quality area better than secondary standard but in which moderate growth would be permitted.

(3) Air quality level to be determined by secondary standards.

The final classification of areas into these categories would take place after public hearings. No hard emission or air quality increments would be promulgated by EPA as limiting factors. Since the EPA regulation would not provide for firm maximum increments of pollution, it is expected that court challenges as to the adequacy of the EPA promulgation would take place.

Because of the potential for further litigation, the importance of this issue to our environmental and energy problems and the potential impact of EPA's regulations on State and local land use responsibilities, EPA believes that Congress should explore all alternatives for dealing with the significant deterioration issue in testimony and debate.

In closing, I would like to reiterate that significant progress has been made under the Clean Air Act. We look forward to early hearings and full Congressional debate on these proposals.

Sincerely yours,

RUSSELL E. TRAIN,
Administrator.

ATTACHMENT B. LEGISLATIVE LANGUAGE THAT WOULD IMPLEMENT THE VIEWS OF OTHER AGENCIES ON THE ISSUE OF SIGNIFICANT DETERIORATION

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SIGNIFICANT DETERIORATION

Section 101(b)(1) of the Clean Air Act is amended to read as follows:

"(1) to protect and enhance the quality of the Nation's air resources by establishing, achieving, and maintaining national ambient air quality standards, standards of performance of new stationary sources, and national emission standards for hazardous air pollutants so as to promote the public health and welfare and the productive capacity of the Nation, but nothing in this Act is intended to require or authorize the establishment by the Administrator of standards more stringent than primary and secondary ambient air quality standards;".

ATTACHMENT C. LEGISLATIVE LANGUAGE THAT WOULD IMPLEMENT THE VIEWS OF OTHER AGENCIES ON THE ISSUE OF INTERMITTENT CONTROLS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

INTERMITTENT OR ALTERNATIVE CONTROL MEASURES

Section 110 of the Clean Air Act is amended by adding **subsection (h)** which reads as follows:

"(h) Nothing in this section shall be construed to preclude use of alternative or intermittent control measures which the Administrator determines are reliable and enforceable and which he determines will permit attainment and maintenance of the national ambient air quality standards."

SENATOR MUSKIE'S STATEMENT ON S. 3287

Clean Air Act Amendments Proposed by Administration

Mr. Muskie. Mr. President, on Friday of last week, Environmental Protection Agency Administrator Russell Train transmitted to the Congress a series of proposed amendments to the Clean Air Act. At the time of transmittal, I indicated that my reaction was negative to those proposals which expanded the scope of pending energy emergency legislation. I also indicated I would carefully consider the other proposals out of respect for Administrator Train and the battle he had waged within the executive on behalf of clean air.

Subsequent to transmittal of these proposals, questions have been raised regarding their future. I understand that some officials in major metropolitan areas with serious air quality problems are considering relaxing present pollution control efforts on the sole basis that these amendments have been proposed. Also, I understand there is a great deal of general public concern as to the potential environmental impact for what appears to be wholesale retreat on clean air efforts.

Because Administrator Train has not yet sent to the Congress any more than the brief statement of purpose included in his transmittal letter, I have not been able to determine the specific purpose of each of the administration's proposed amendments.

There are several, however, which are sufficiently clear to be discussed at this point. These amendments, which appear to be the products of the Federal Energy Office rather than the Environmental Protection Agency, need to be placed in the perspective of the legislative process to assist those who are in doubt as to the future of the clean air program.

It is important to know that the Subcommittee on Environmental Pollution, which has legislative responsibility for consideration of these amendments, has scheduled no hearings on them nor will specific legislative hearings be scheduled in the near future.

For the past 2 years the subcommittee has been evaluating the implications of the 1970 Clean Air Act. The first result of that evaluation was S. 2772, the auto emission standards extension legislation which passed the Senate last December.

In addition, on November 15 we began our detailed evaluation of the transportation-control requirements of the law. The subcommittee has a schedule which calls for hearings in April and May to review and evaluate other issues raised by the Clean Air Act. Following conclusion of those oversight hearings, we will determine the need for and the timing of any legislation.

As to the amendments themselves, it can be said generally that they depart from the spirit of the 1970 Clean Air Act in that they substitute doubt for certainty and delay for deadlines. For example, the proposed

flexibility to establish new timetables for transportation-control plans, eliminates, for all practical purposes, the usefulness and value of deadlines. By proposing two potential 5-year extensions from the 1977 deadlines for clean, healthful air and by proposing that only control measures which do not result in unreasonable social and economic change can be taken, there appears to be little possibility that major metropolitan areas with difficult problems would ever have clean air.

The need to keep tight timetables was recognized by the mayor of the Nation's most seriously polluted city when he recently called for no more than a 2-year delay in the deadlines for implementation of transportation-control plans in his area.

Mr. President, inasmuch as there is no record to justify the 10-year extension proposed by the administration's bill, I would caution State and local air pollution control officials not to assume that the administration proposal is in any way a fait accompli.

Mr. President, while I have questions regarding other aspects of the Environmental Protection Agency proposal for general Clean Air Act amendments, I will withhold them until a later date when I have had an opportunity to evaluate their implications in more detail.

I would like to comment specifically on aspects of the administration's transmittal which I consider to be a gross breach of faith and which I understand were initiated in the Federal Energy Office. The provisions which relate specifically to energy emergency authority, coal conversions and auto emission extensions represent significant departures from our prior agreements. And, there is no reason whatsoever for inclusion of these proposals in this legislation at this time.

In the first place, representatives of the House and the Senate and the administration have been negotiating on a redraft of legislation to provide the administration with the necessary authority to deal with present and near term energy shortages. All parties agreed, albeit some reluctantly, that the clean air aspects of that legislation would be identical to title II of the energy emergency legislation which the President vetoed earlier this year.

Now in the midst of those negotiations the administration has chosen to transmit a series of amendments to the Clean Air Act which change radically the thrust and impact of the energy emergency—clean air provisions. And I know of no reason why the administration should choose to transmit these amendments to those provisions at this time unless it is their intent to violate the agreement previously reached and attempt to change in major ways the provision of **title II** of that bill when it reaches the floor of the House or the Senate.

I would like to discuss the administration's proposed changes in those provisions in order that my colleagues can see the extent to which this administration intends to use the Nation's deep distress with energy shortages to gut the clean air effort. The redrafted clean air features of the energy emergency bill would do the following:

First, Companies choosing to convert to coal would have until January 1, 1980, rather than January 1, 1979, to meet applicable emission control requirements. **[Sec. 9.]**

Second, All requirements to agree to achieve "continuous" emission reductions at the end of the suspension period have been dropped and socalled intermittent control strategies—the rhythm method of pollution control—have been substituted. **[Sec. 8.]**

Third. Any source ordered to convert would have until May 15, 1977, [Sec. 8], rather than November 1, 1974, to make a decision whether or not to convert back to oil, thus reducing the lead-time for the installation of control technology and increasing the doubt within the coal industry as to the certainty of their markets.

Fourth. The authority of the Administrator to require interim use of reasonably available clean fuels during any variance period has been modified to give the cost of use of such fuels priority over air quality requirements. [Sec. 8.]

Fifth. All procedural protections relating to hearings and notification of affected State and local officials have been deleted—apparently more evidence of the administration's commitment to the concept of "new federalism." [Sec. 8.]

Sixth. The new administration bill would require suspension of Clean Air Act emission control deadline—and thus air quality protective of public health—solely on the basis of the unavailability of "domestic" supplies of fossil fuels. Even as the administration is announcing success in lifting the Arab oil embargo, they would propose to make short-term environmental policy wholly dependent on the availability of domestic fossil fuel supplies. [Sec. 8.]

Seventh. Coal conversions could be ordered for virtually every fossil fuel-fired electric powerplant in the country rather than the very limited few anticipated by the Energy Emergency Act. Under the Energy Emergency Act only a minimal number of facilities with existing coal use capability could have been mandated to switch to coal. Thus only a few facilities could take advantage of Clean Air Act deadline extensions. By definition the Administrator's authority was limited to those facilities which have the "capability and the necessary plant equipment" to burn coal. Under the new proposal the Administrator has to find if the necessary plant equipment to burn coal is "reasonably available" to the facility which is ordered to convert. [Sec. 9.] This provision would expand the scope of the act far beyond anything anticipated. Not only would the potential havoc to the environment be enormous but the public could be ripped off for millions of dollars from crisis conversions for coal supplies or pollution control equipment.

Eighth. In addition to those aspects of the proposal which relate to coal conversion and energy shortages, the administration has also transmitted a series of amendments to the auto emission standards requirements of the 1970 act. These proposals were considered and rejected by the Congress last winter. They include a provision to extend for 3 rather than 2 years the 1975 interim standards for hydrocarbons and carbon monoxide. The amendment also includes a provision to abandon entirely the efforts to reduce oxides of nitrogen emission from new cars. [Sec. 12.]

The administration bill proposes that the statutory standards and deadlines for cleanup of oxides of nitrogen be eliminated and that the Administrator set a standard based on technology, cost and energy efficiency and air quality—the same basis for determining emission control levels which existed prior to 1970 and which resulted in an increase rather than a decrease in the emission of oxides of nitrogen from automobiles. [Sec. 12.]

Mr. President, I think America needs to have the capability to utilize domestic fossil fuels. I think our utilities should have the capability to burn our coal as well as oil. And I think over the next 5 to 10 years we ought to require that major electric generating plants have the capability to burn both. But this policy need not require the sacrifice of clean air. In fact, our policy can and should require the installation of air pollution controls on all facilities which have such dual capability to insure against any reduction in air quality as a result of fuel switches. It is preposterous to suggest that the decisions of the electric utilities to utilize solely foreign oil for price and pollution control reasons in the 1960's should now be a justification for abandonment of clean air efforts. Their responsibility is to provide both electricity and clean air. This can be done with an orderly policy of coal conversion and emission control installation. And this is the kind of policy which apparently this administration is not prepared to consider.

Mr. President, as I have said before, there are matters included in this package which merit the consideration of the Congress and they will be considered at the appropriate time. In the interim, I would only caution those affected by these amendments not to assume their enactment on the basis of their transmittal or their introduction.

CHAPTER 6

The Veto: Message and Debate, S. 2589

THE ENERGY EMERGENCY ACT—VETO MESSAGE

Energy Emergency Act—Veto Message From the President (S. Doc. No. 93–61)

The Acting President pro tempore (Mr. Nunn). The Chair lays before the Senate a veto message from the President of the United States on S. 2589, the Energy Emergency Act, which will be spread upon the Journal and will be considered by the Senate at 3 p.m. today pursuant to the previous unanimous-consent agreement.

The text of the President's message is as follows:

To the Senate of the United States:

It is with a deep sense of disappointment that I return the Energy Emergency Act to the Congress without my approval.

For almost four months the Congress has considered urgently needed legislation to deal with the Nation's energy problem. After all the hearings and speeches, all the investigations, accusations and recriminations, the Congress has succeeded only in producing legislation which solves none of the problems, threatens to undo the progress we have already made, and creates a host of new problems.

I share the sense of frustration and discouragement which must be felt by the many conscientious legislators who spent so many laborious hours trying to draft a responsible bill, only to see their efforts wasted.

ROLLING BACK GAS SUPPLIES [Sec. 110]

The Energy Emergency Act would set domestic crude oil prices at such low levels that the oil industry would be unable to sustain its present production of petroleum products, including gasoline. It would result in reduced energy supplies, longer lines at the gas pump, minimal, if any, reduction in gasoline prices, and worst of all serious damage to jobs in America. Unemployment would go up, and incomes would go down.

Certainly everyone shares the goal of increasing energy supplies, and our present policies are directed toward this end.

We now have a system for controlling crude oil prices at a level consistent with maintaining and increasing production. To do this, we are permitting higher prices for "new" crude oil in order to encourage greater domestic production.

Our experience in administering the crude oil allocation program passed by the Congress last fall has shown how difficult it can be if enough flexibility is not provided by statute. It is our hope that we can work with the Congress in the coming weeks to develop a more flexible allocation program.

The net effect of the price provision of the Energy Emergency Act would be to cut the supply of gasoline and other oil products, and make compulsory rationing of gasoline much more likely. I am sure the vast majority of Americans want to avoid an expensive gasoline rationing program which would do nothing to increase the supply, would cost $1.5 billion a year to manage, would require a bureaucracy of as many as 17,000 people, and would create problems of fairness and enforcement.

The rolback would not only cut domestic oil production, but would also retard imports since in the present environment oil companies are reluctant to import oil and gasoline that would have to be sold at prices far above the domestic prices.

Further, the effects of the price rollback would not be confined to the immediate situation. The longer-run consequences could be even more serious. If we are to achieve energy independence, hundreds of billions of private dollars will have to be invested in the development of energy from U.S. sources. This money will not be invested if investors do not have reasonable assurance of be-

ing able to earn a return in the marketplace. To make the price of oil a political football, as this act does, would be a serious setback for Project Independence.

As we call upon industry to provide these supplies, I feel very strongly that we must also insure that oil companies do not benefit excessively from the energy problem. I continue to believe that the most effective remedy for unreasonably high profits is the windfall profits tax which I have proposed. That tax would eliminate unjust profits for the oil companies, but instead of reducing supplies, it would encourage expanded research, exploration and production of new energy resources. The Congress is holding hearings on this proposal, and I hope it will move —rapidly toward passage. I urge the Congress to enact this windfall profits tax as quickly as possible.

OBJECTIONABLE PROGRAM FOR UNEMPLOYMENT [Sec. 116]

Beyond the rollback provision, the Energy Emergency Act is also objectionable because it would establish an unworkable and inequitable program of unemployment payments. Under it, the Government would be saddled with the impossible task of determining whether the unemployment of each of the Nation's jobless workers is "energy related." In addition, eligibility for these benefits would not take into account the availability of jobs in the area. There is no excuse for shoveling out the taxpayer's money under a standard so vague and in a fashion so arbitrary.

The correct answer to the problem of those who become temporarily unemployed for any reason, energy or otherwise, is to strengthen our regular unemployment insurance program, extend it to workers not now covered, and provide additional benefits to those who lose jobs in areas where high unemployment rates show that other jobs will be hard to find. I asked the Congress to strengthen and extend the unemployment insurance system last year. I recently expanded this request to provide additional benefits in areas of high unemployment.

I urge the Congress to enact this latest, expanded proposal.

LOW INTEREST LOANS [Sec. 130]

In addition, this legislation contains authority for the Department of Housing and Urban Development and the Small Business Administration to make low interest loans to homeowners and small businesses to finance insulation, storm windows and heating units. If every eligible homeowner and small businessman took advantage of this section, the result could be an outlay for federally-guaranteed, low interest loans of many billions of dollars. The actual energy savings produced by these vast expenditures would not justify such an enormous loan program.

FACING UP TO OUR NEEDS

The energy shortage has been a pressing problem for the American people for several months now. We have made every effort to soften the impact of this problem. We have come through this winter without serious hardship due to heating oil shortages. We have tried to distribute gasoline shortages equally. Many are concerned about rising costs of such energy supplies as propane, and we have taken action to reduce these prices while continuing to increase supplies. Above all, we have tried to insure that basic industries would not be severely affected and that unemployment due to the energy shortage would be kept to a minimum. We have been largely successful in these endeavors. But we must be able to approach this situation in a systematic fashion that aims not at symptoms, but at solutions to the problem itself.

The time has passed for political debate and posturing that raise false hopes. It's time for all of us to face up to this problem with a greater sense of realism and responsibility.

Unfortunately, there are some who have chosen to capitalize on the Nation's energy problems in an effort to obtain purely political benefits. Regrettably, the few who are so motivated have managed to produce the delays, confusion, and finally the tangled and ineffective result which is before me today. The amendments, counter-amendments, and parliamentary puzzles which have marked the stumbling route of this bill through the Congress must well make Americans wonder what has been going on in Washington while they confront their own very real problems. We must now join together to show the country what good government means.

We need the authority to require energy conservation measures. We need the direct authority to ration gasoline if, and only if, rationing becomes necessary, which it has not. We need the authority to require conversion of power plants, where possible, to permit the use of our abundant coal reserves. We need a well-conceived Federal Energy Administration capable of managing national energy programs and not the woefully inadequate Federal Energy Emergency Administration mandated in S. 2589.

We must, above all else, act to increase our supplies of energy. To meet this important goal, I have submitted to the Congress a comprehensive package of legislative initiatives which I have repeatedly urged the Congress to pass. I have offered every possible kind of cooperation with the Congress in shaping this vital legislation.

In addition to my requests for a windfall profits tax and unemployment insurance plan, the Congress has many other Administration proposals before it, including:

—Mandatory reporting of energy information, a proposal which requires energy companies to report on inventories, production, cost, and reserves with information to be made public in most cases.

—The Natural Gas Supply Act to allow competitive pricing of new gas supplies and encourage exploration.

—A resolution permitting limited production if oil from Naval Petroleum Reserve #1 (Elk Hills) and providing funds for further exploration and development of Reserve #1 and exploration of Reserve #4 (Alaska).

—The Mined Area Protection Act, establishing standards that would permit mining of coal to go forward while minimizing environmental impact.

—The Deepwater Port Facilities Act, authorizing the Secretary of the Interior to grant permits for the construction and operation of ports beyond the three-mile limit.

—The Minerals Leasing Act, placing all mineral exploration and mining activities on Federal lands under a modernized leasing system.

—A drilling investment tax credit to provide an incentive for exploratory drilling for new oil and gas fields.

—Creation of a Federal Energy Administration to deal with the current energy problem and to carry out major new activities, in energy resource development, energy information and energy conservation.

—Creation of an Energy Research and Development Administration to provide a central agency for Federal energy research and development programs.

—Creation of a Department of Energy and Natural Resources to provide a new Cabinet department for the comprehensive management of energy and natural resource programs.

Further key measures will be proposed to the Congress in the very near future, including a set of amendments to your environmental legislation that would provide the flexibility necessary to acquire and use our fuel resources most efficiently in times of shortage. I will continue to propose legislative initiatives in order to respond to the changing needs and priorities generated by the energy problem.

In enacting this Energy Emergency Act after long months of waiting by the American people, the Congress has sadly failed in its responsibility. I believe the Nation expects better. It deserves better.

In returning this bill, I pledge once again the full cooperation of my Administration in the effort to provide energy legislation which is responsive to the problems we face and responsible in its impact on the economy and on the American people.

RICHARD NIXON.

THE WHITE HOUSE, *March 6, 1974.*

SENATE DEBATE ON OVERRIDING THE PRESIDENT'S VETO OF S. 2589, MARCH 6, 1974

Energy Emergency Act—Veto

The Senate continued with the reconsideration of the bill (S. 2589), the Energy Emergency Act.

Mr. Jackson. Mr. President, I wonder if the time could be equally divided.

The Presiding Officer. Is there objection?

Mr. Fannin. I have no objection.

The Presiding Officer. Without objection, the time will be equally divided.

Mr. Jackson. Mr. President, I will proceed now with an opening statement and then yield to my colleague, if that is all right.

The Presiding Officer. The Senator may proceed.

Mr. Jackson. Mr. President, the President's veto of the Energy Emergency Act is a flagrant show of contempt for the impact of fuel shortages and soaring fuel prices on the American people.

The President's veto message contains nothing new.

He defends and advocates higher oil prices. **[Sec. 110.]**

He opposes unemployment compensation for the thousands of Americans who have lost their jobs. **[Sec. 116.]**

He opposes low-interest loans to homeowners and to small businesses. **[Sec. 130.]**

He ignores the fact that the energy emergency bill contains every reasonable authority to deal with the shortage that the administration has requested, and much essential authority which was not requested.

Over a period of 4 months, the Congress has worked diligently to provide the executive branch with adequate authority to manage energy shortages and control soaring fuel prices.

Congress has acted on its own initiative from the outset. While the executive branch agreed in principle with the need for such action, it has never submitted specific legislation and provided little, if any, serious assistance to the Congress in developing an effective Energy Emergency Act.

Earlier this year, the Energy Emergency Act passed both the House and Senate by overwhelming majorities. As it was sent to the President, the act gave him essential authority to promulgate energy conservation plans, institute rationing if necessary, convert powerplants to coal and thereby conserve petroleum supplies, and provide additional unemployment assistance benefits to those unemployed because of the energy shortage.

But what the administration could not stand, above all, in the Emergency Act, was the congressional determination that crude oil and petroleum prices be held at reasonable levels. **[Sec. 110.]**

The President asserts that the price rollback in the Energy Emergency Act would "result in reduced energy supplies," that "the industry would be unable to sustain its present production."

That assertion is preposterous. In February 1973, the domestic oil industry was producing 9.4 million barrels of crude oil per day at an average price of $3.40. In February 1974, it produced 9.2 million barrels a day at an average price of $6.95. So it is obvious that production was 200,000 barrels a day less than a year ago.

Mr. President, crude oil prices have doubled, and crude oil production has not increased one whit. It is down.

Let us look at the largest exempt category of crude oil. In February 1973, production from stripper wells in the United States was 1.17 million barrels per day, at an average price of $3.40. In February 1974, stripper well production was 1.15 million barrels, at an average price of $10.35. Prices have nearly tripled, and production is no higher than it was 1 year ago.

Mr. President, the price rollback provision of the Energy Emergency Act is very moderate. Many Members feel that even $5.25 per barrel is not justified—either by increased costs or by the need for incentives. But the Congress has been exceedingly cautious in this legislation, lest there be any chance that a price rollback might reduce future production. We have provided a general price ceiling 54 percent higher than the average price of 1 year ago, and have permitted the administration to increase this ceiling for reasonable categories of production—like stripper wells—to an average of $7.09—more than twice the price of 1 year ago.

Mr. President, the failure to override this veto will cost the American consumer—and I think of all those propane users in particular—$20 million per day, $600 million per month, and $7.3 billion this year. These excess prices are not an incentive to increase exploration and development, which are today at the highest levels we can reasonably expect, given the acreage under lease, the supply of drilling rigs, materials, and skilled personnel. These excess prices are pure windfalls; they are both a stimulus to cost inflation and a drag on the economy. With inflation raging at record rates and the Nation on the brink of a recession, this veto is the height of economic irresponsibility.

Mr. President, I reserve the remainder of my time.

Mr. FANNIN. Mr. President, we have reached the final round on the Energy Emergency Act after struggling with this bill for more than 4 months.

Many of us have spoken at length on the infirmities of this legislation, particularly the price rollback provision. **[Sec. 110.]** It is regrettable that the chairman of the Interior Committee insisted that this section remain in the bill.

Basic economics dictates that the supply of energy is significantly elastic to price. Higher prices stimulate greater production efforts, and consequently increased supply. FPC regulation of natural gas prices—which resulted in artificially inflated demand and depressed the supply of natural gas—is a good example of what can be expected from Government control of petroleum prices. In light of current shortages, how can Senators responsibly support a measure which will almost certainly inhibit development of energy supply?

By the same token, how can Senators support a measure which undoubtedly will resut in higher prices to the consumer over the long run? Let me assure you that every barrel of domestic oil that the industry cannot afford to produce at $5.25 or even $7.09 or $9 or $10 a barrel will be imported—and we are all too familiar with the stratospheric prices of foreign oil today. Consumers will end up paying more, not less, for fuel. Our balance of payments will deteriorate rapidly.

If we reject this bill and let our domestic oil industry work, it will be in the interest of the consumer and our international economic position. It will mean more jobs and more tax revenue.

To avoid short-term windfalls, it would be wise to adopt proposals of the type recently proposed by the administration. This should include a provision for crediting against the tax the reinvestment of additional revenues in domestic energy producing projects. A measure such as that would not only avoid excess profits, but also encourage development of increased supplies.

On the other hand, rolling back prices as provided for in the Energy Emergency Act will lead to longer lines at the gasoline pumps. Consumer prices will rise as the higher cost of importing petroleum to replace the domestic production lost due to reduced prices is passed through to the consumer. It is the independent producer, rather than the major oil companies, who will suffer because marginal wells are the ones most vulnerable to the effects of lower prices. Our economy will experience an unnecessary drain of billions of dollars annually for foreign oil. How can Senators responsibly support a measure which will produce such potentially disastrous results?

Mr. President, when we took that rollback proposal up at the beginning of this session there were hearings which were called hastily and which were held in an atmosphere of near hysteria. When this bill came to the floor, the Senate did not have the facts necessary to deal with this provision. During debate on the bill, the distinguished chairman of the Senate Committee on Interior and Insular Affairs made a great number of claims as to what the rollback provision **[Sec. 110]** would do. It is my belief that the chairman's arguments were not and are not based on facts. I think he was receiving information that was not factual. I would like to go over some of the points of the previous debate, recalling what Senator Jackson said.

Senator Jackson said:

> The unregulated and artificially high price of domestic crude oil is counterproductive. It is retarding exploration for a development of new oil discoveries. Instead of encouraging the development of new wildcat acreage, the present price structure does the opposite. It encourages the drilling of new wells on old reservoirs that are already in production.

That is absolutely wrong.

The facts are that higher prices are stimulating production. New oil is either production from wells drilled since 1972, or incremental production—over and above—the level of product in the comparable month of 1972—the base year. If a new well were drilled next to an old well, production from the old well would decline and offset the credit for the new production, unless the total amount produced from the lease increased over the level of 1972. Only the cumulative increase counts as "new" oil, and that is the whole idea—to increase total U.S.

crude oil production. To qualify as a totally "new" well, it must be in another lease, not just next to an old well.

Senator Jackson said that "Respected oil analysts . . . say that these (current) price levels will not buy increased supply."

The facts are that, due to existing prices, the U.S. petroleum industry plans to invest over $191/2 billion in 1974— $19,531,000,000—of which $12,134,000,000 is for exploration and production of petroleum. Funds budgeted for drilling and exploration—$7,669,000,000—represent a 16-percent increase over 1973. These investments would not be made unless the industry expected to be able to increase supply. A price rollback would result in investment cutbacks and thereby decreases in production.

Senator Jackson said that "Doubling of prices has failed to elicit any new supply."

The facts are that Senator Jackson went on to admit that a small increase—34,000 barrels per day—had taken place. What he failed to admit is that for several years the trend of crude oil production has been downward. What these higher prices have done is to stem that downtrend and turn the corner toward increased production.

That is what we are talking about. That is what we want.

In addition, the $1 extra incentive was only granted in December 1973, and has had little time to have an impact yet. There is some timelag between increased recovery efforts and the oil reaching markets. It is also true that congressional threats of a price rollback have served to scare off investors and make expensive well workovers more risky. The investment climate is very uncertain, and few operators or drillers are willing to gamble that oil which is economically producible at $8 per barrel, might end up in the "red" because of a price cut.

Senator Jackson said:

> These artificial cartel price levels serve no economic purpose. They are, in fact, counter-productive. They reduce longer term supply. They compel cynical and foolish distortions in the allocation of capital, machinery, and labor.

The facts are that Senator Jackson in his own hearings in January admitted that he could find no evidence of collusion or price fixing. There are over 6,000 independent crude oil producers in 39 States. The 16 largest U.S. producers accounted only for two-thirds of 1972 production, considerably less concentrated than autos, or steel, for example. As for allocations of capital, material, and labor, it is these things which are needed to increase domestic production. If producers get higher prices, they can bid labor, materials, and capital away from other sectors of the economy, to ease the shortages on these things which Senator Jackson charged earlier were the cause of the shortage. In fact it is just this "economic purpose" which higher prices serve.

I am not talking about the higher prices of the end product at the service stations. In fact, we are talking about lower prices there.

Senator Jackson said:

> This administration is still committed to the nineteenth century notion that the way to deal with the energy shortage is to limit demand by raising consumer prices.

The facts are that this country's economic strength is based upon a recognition that the profit motive is what makes the marketplace work.

Higher crude prices stimulate greater production as well as tend to curb demand. Lower prices or rationing will not stimulate supply, and will encourage waste of energy. In addition, gasoline is only a portion of the cost of operating an automobile. For example, a car which gets 15 miles per gallon, and uses gasoline which costs 50 cents a gallon, has a cost per mile of gasoline of 3.33 cents per mile. Many studies done by the Department of Transportation suggest that the total cost of operating a car are in the range of 10 cents per mile to 15 cents per mile, including gasoline. Thus a 1-cent-per-gallon change in price of gasoline has almost no effect on the total cost per mile of operating a motor vehicle.

Senator Jackson said:

> The real constraint on supply today is not price. The constraints today are shortages: manpower, tubular goods, drilling rigs, et cetera.

The facts are that higher selling prices for crude enable oil producers to "bid" steel, manpower, and other materials away from other sectors of the economy. This price mechanism is the most efficient allocator of resources of any kind.

On February 26, 1974 the Cost of Living Council removed oil field machinery from price controls, which should permit higher prices for such equipment. The result is that manufacturers of such equipment can now make a profit on the manufacture of that equipment, which should help ease the material shortages Senator Jackson alluded to.

On the need to tighten price loopholes, Senator Jackson said:

> Loopholes enable the unscrupulous to take advantage to double the value of their "old" oil—their presently producing fields—by simply drilling and pumping the oil through new wells.

The facts are that this is not true. "New" production must be from a new or different lease, not only from a new well, unless the total production from the lease is greater than the rate of production in 1972, month for month. Only the excess of current production over the base period is "new" oil, from any given lease. Furthermore, excess or incremental production credits not used in any given lease may not be credited to another lease. The incentive to produce new crude is not a loophole. Before any benefit can be derived, new oil must in fact be produced.

Senator Jackson said: "Pursuit of this loophole enriches owners of producing fields. It does not produce more oil."

The facts are that if no more oil is produced than during the base year, it is still price-controlled at a ceiling of $1.35 above the posted price on May 15, 1973, so no "enrichment" can occur. The production of additional oil proves the allegation to be false.

Senator Jackson said that the administration has exempted—"Three major categories of crude from price controls."

The facts are that at least 70 percent of domestic crude is still under price controls. Stripper wells account for about 12 percent of domestic crude and were exempted by an act of Congress. New and released crude account for about 7 percent each, so that the total for that which is not under price controls is about 26 percent.

Concerning the cost to consumers, Senator Jakson said that—

> An increase of 34,000 barrels per day . . . is what the American consumer is getting in the way of new supply at a cost of $20 million a day.

The facts are that about 30 percent of total production is free of price controls. If it all were selling at $10.35 per barrel, which it is not, and were rolled back to $5.25 per barrel, or cut $5.10, the so-called saving would be $16.6 million. This might reduce pump prices by 1 cent per gallon, but would have considerable negative impact on future supply expectations. The American consumer already spends over $140 million every day on gasoline alone, of which State and Federal taxes amount to over $33 million per day.

Regarding stripper well production, Senator Randolph said:

In the State of West Virginia, when we talk about the maximum for stripper production it would come to approximately $8 a barrel rather than $7.09 that is frequently referred to (by Senator Jackson) . . . There is flexibility in this provision, section 110, to deal with the special situation regarding stripper wells and secondary and tertiary recovery.

Senator Jackson said: "The Senator (Mr. Randolph) is correct."

The facts are that the price of stripper well crude under S. 2589 would be limited to $5.25 per barrel unless raised to $7.09, except for Pennsylvania grade crude such as is produced in West Virginia. Thus, the "flexibility" referred to by Senator Randolph and agreed to by Senator Jackson is limited to Pennsylvania grade crude production. In November of 1973 Pennsylvania grade production was only 36,200 barrels a day, as contrasted to the total of 9,144,000 barrels a day produced within the United States. The crude to which the "flexibility" in price was referred to by Senator Randolph applies to only .04 percent of total national production. Thus, for all practical purposes the price ceiling on U.S. crude production established by S. 2589 would be $5.25 per barrel with a possible upward adjustment to $7.09—not $8 per barrel as otherwise alleged.

Concerning propane, Senator Jackson said:

I had the words "including propane" added to the provision so as to remove any question about having it covered. Specifically, we estimate a rollback of about 50 percent in the price of propane if this conference report is adopted. Where the average national price is now 42 cents, it would go back to about 22 cents.

The facts are that Secretary William Simon stated that:

Section 110 of the Conference Report . . . which calls for a rollback of crude prices to $5.25 per barrel with a ceiling of $7.09 per barrel would have little impact if any in further reducing the price of propane. We feel the action we have already taken should be sufficient to protect American consumers who are dependent upon propane.

The House has now acted on propane prices, but I did want the Senate to realize that only about one-third or less of the total amount of propane comes from crude oil.

What Senator Jackson failed to state is that 68 percent of the propane produced in the United States comes from natural gas wells, all of which are not covered by S. 2589. The act accordingly applies to only 32 percent of U.S. propane supplies. Most of this 32 percent is used as refinery fuel and therefore never reaches the consumer. Thus, if crude prices were set at $7.09 per barrel the decrease in propane prices would be only a fraction of a cent, not 20 cents.

Mr. President, I cannot believe that if the Senate knew and understood all the facts last February 19 this body would have voted for the rollback in the first place. Now we have a chance to undo this damaging legislation.

The price rollback [Sec. 110] is not the only provision of this bill which would exacerbate the fuel shortage rather than relieve it. Mr. Simon—who would administer this legislation should it be enacted—has termed "unworkable" both the employment assistance provision and the section creating a Federal Energy Administration. The provision for low-interest loans to small businesses and homeowners has been predicted to cost the Government up to $75 billion while yielding proportionally small energy savings.

As Mr. Simon pointed out before the Senate approved the conference report on February 19th, this legislation contains very few needed authorities. It imposes costly requirements that hinder rather than help Government efforts to deal effectively with the energy shortages. Every important provision is addressed in separate and more reasonable legislation already in the congressional process.

Mr. Simon has made it clear that in order to deal successfully with the shortages we face today, he must have greater flexibility than is provided in this legislation. The provisions of this bill—particularly the price rollback—are dangerous enough to necessitate a Presidential veto. Senators voting to override that veto will help to guarantee for their constituents and for all other Americans, continued shortages, higher prices, and unemployment. I urge my colleagues to consider carefully the long range implications of their vote on this legislation.

Mr. President, there are other problems in the bill that I will not cover this time. I reserve the remainder of my time.

Mr. Haskell. Mr. President, I thank the distinguished Senator from Washington for yielding to me.

Mr. President, on November 8, 1973, the President of the United States addressed the Nation on the effect of the energy crisis. At that time he announced that he would request the Congress to act to give him the necessary emergency authority so that the effects of the crisis could be softened wherever possible.

Due to the foresightedness of the chairman of the Interior Committee (Mr. Jackson), legislation which would give the President the authority he requested had been introduced 3 weeks before—October 18, 1973.

The Congress has been struggling with the energy emergency situation for some 4 months now trying to work out an equitable solution which would meet the needs of the country in these difficult times.

As my colleagues know, we finally worked out a compromise which was satisfactory to more than two-thirds of the Members of Congress and sent it to the President for his approval.

He has now sent that bill back to us saying—

> The Congress has succeeded only in producing legislation which solves none of the problems, threatens to undo the progress we have already made, and creates a host of new problems.

He went on further to accuse—

> Unfortunately, there are some who have chosen to capitalize on the Nation's energy problems in an effort to obtain purely political benefits. Regrettably, the few who are so motivated have managed to produce the delays, confusion, and finally the tangled and ineffective result which is before me today.

Mr. President I resent both of those statements. As a member of the Committee on Interior and Insular Affairs I personally have labored hard and long over this piece of legislation. My colleagues who were

conferees have spent countless hours and often worked far into the night to try to work out an equitable compromise we could all live with. Now the President of the United States is calling this compromise politically motivated to obtain purely political benefits. That statement could not be further from the truth.

Let us examine his first accusation—that this legislation solves none of the problems and, in fact, creates new ones.

A simple look at the table of contents of the bill disproves that statement. Title I provides authority to establish the Federal Energy Emergency Administration; to implement rationing of gasoline if necessary; to establish new energy conservation measures; to provide for conversion to coal facilities where necessary; to allocate scarce materials—just to name a few. Title II sets up the necesary machinery to suspend certain provisions of the Clear Air Act if necessary to meet the needs of the Nation in the crisis situation. Title III requires the various Federal agencies and departments affected by the legislation to report back to us on problems they have with the actions required by the legislation.

I cannot see how one can possibly justify that this legislation "solves none of the problems" facing the Nation in this period of energy shortages.

The second accusation made against the bill is that our motivation for passing it has been "purely political" and that those who are so motivated "have managed to produce the delays, confusion, and finally the tangled and ineffective result which is before me—the President—today."

Once again the case as stated is inaccurate. The administration has to be the single most important factor in contributing to the delay of enacting the legislation. Had the administration spokesmen been more willing to work with us in a spirit of compromise, had they been able to agree among themselves about the key provisions of the legislation, and had they not urged their friends on the Hill to work to kill the bill we would have been able to act months ago.

Lest I be accused of being inaccurate in my assertion let me cite one example of the inability of the administration spokesman to agree or to have a solution.

The Senate Interior Committee members joined with the conferees on the Energy Emergency Act in holding hearings on price rollback legislation.

Two representatives from the Federal Energy Office appeared before us. The Assistant Secretary of Treasury for Economic Policy, Mr. Fiedler, appeared, along with Mr. Gerald Parsky, Executive Assistant to the Administrator of the Federal Energy Office.

I asked Mr. Fiedler:

How far would you roll back the present price that I gather today is $10.25 on New oil?

He replied:

My concern is primarily with the price of all oil because this is a function of conservation that depends on the price consumers are paying and they are paying a price of imported and domestic, not only new, but the old as well and stripper.

I don't have a specific number in mind, but I think that the $5.25 price that Senator Jackson mentioned earlier, rolling all oil prices back to that level, would be disastrous.

I then asked Mr. Fiedler:

Sen. HASKELL. To what level?

Mr. Fiedler replied:

To the $5.25 Senator Jackson mentioned earlier.

I then asked Mr. Fiedler:

Do you have any opinion at all as to where it should be rolled back to?

Mr. Fiedler replied:

Not any specific number.

I interpret that as an indication that Mr. Fiedler—one of those responsibile for determining the Administration's policy with respect to oil prices—has no opinion whatsoever as to what those oil prices should be.

Let me contrast his statement of no question with the statement made by Mr. Parsky:

Mr. PARSKY. "We would agree that the average price of $9.50 or so is too much too fast, no question about that. We are now in the process of studying the pricing situation and trying to carefully assess the economics of secondary and tertiary recovery as well as the economics of operating stripper wells in order to come up with an accurate level that can continue to increase supply."

Later on in the same hearing he stated:

The intention at this point would be or at least all indication that we have are the $5.25 on old oil is sufficient.

I cannot stress too strongly that the Administration's designated spokesman, in an appearance before the Interior and Insular Affairs Committee, testified that a price of $5.25 on old oil—the price contained in the Conference Report—is sufficient.

Now the bill has been sent back to us with a complaint that—

The price roll back provision . . . would set domestic crude oil prices at such low levels that the oil industry would be unable to sustain its present production of petroleum products, including gasoline.

Section 110 of the conference report version of the legislation provides for an average ceiling price of $5.25 per barrel on crude oil supplies. The President is empowered to recommend to the Congress that where necessary crude oil prices be raised to an average price of $7.09 per barrel.

It is clearly the intent of the Congress that there would be a two-tiered pricing system. I discussed this very matter with the distinguished chairman of the Interior Committee during debate on adoption of the conference report. I believe in the necessity of encouraging new oil supplies. I would support a two-tier pricing system if recommended by the President. But the ceiling price of $7.09 per barrel is sufficient to insure those new supplies. A study by the National Petroleum Council on oil and gas availability, prepared in December 1973, indicated that for maximum attainable self-sufficiency by 1980 the average revenue per barrel of crude would have to be $3.65 per barrel assuming a 15-percent rate of return or $4.32 per barrel assuming a 20-percent rate of return in 1975. Those prices increase to $6.69 per barrel and $7.87 per barrel respectively by 1985.

As the Petroleum Independent put it in November 1973:

There's no doubt that prospects are for increased drilling. Everybody I know is planning on it. With new oil prices from $5.30 to $6.00 per barrel, there's incentive now to go looking for oil.

Either the President of the United States has been misinformed about the true situation with respect to oil prices, or he is deliberately misleading the American people.

It is simply impossible to substantiate his statement that:

The Energy Emergency Act would set domestic crude oil prices at such low levels that the oil industry would be unable to sustain its present production of petroleum products.

Once again I intend to vote in favor of S. 2589, the Energy Emergency Act. It is sound legislation. It is necessary legislation. We simply cannot afford to bow to those who want to let oil prices skyrocket for the benefit of the oil industry and to the lasting detriment of the American consumer.

I thank the Senator from Washington.

Mr. JACKSON. Mr. President, I commend the distinguished Senator from Colorado for an excellent statement. I think he has analyzed the problem from every angle, especially as it pertains to the economics of the industry.

I would point out to Senators that he has been conducting an in-depth study of the industry, both from the standpoint of its structural implications and the standpoint of its impact on the marketplace and on our economy as a whole. I commend him for the ongoing effort he is making. His statement here today obviously reflects that in-depth study, which he has had underway now for several months.

Mr. MCCLURE. I wanted to make sure I understood one of the statements made by the Senator from Colorado. I understood him to say that under the conference report, if the President felt there was a price increase justified, that would be reported to Congress; is that correct? Is that what the Senator said?

Mr. HASKELL. I do not know what I said, but I will answer the Senator's question. My understanding is that under the conference report, the price was set at $5.25, but under special categories of oil, at the recommendation of the President, it can go up to an average of as high as but no higher than $7.09. It was the intent of Congress, as developed on the floor when the conference report was before us, that for certain categories of stripper wells the price would go higher, and for certain categories of new oil it would go higher.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JACKSON. I yield 1 additional minute. Let me supplement that comment by referring to page 11 of the conference report, under **section 110:**

(B) Every price proposed to be specified pursuant to this subsection which specifies a different price or manner for determining the price for domestic crude oil provided for in paragraph (3) of this subsection, and every price specified for (or every prescribed manner for determining the ceiling price of) residual fuel oil and refined petroleum products, shall be transmitted to the Congress and shall be accompanied by a detailed analysis.

Setting forth the various required findings that appear on page 12.

Mr. MCCLURE. I do not want any misapprehension as to the procedures required under the conference report in regard to pricing changes.

I had understood the Senator from Colorado to say that it had to be sent to Congress, and the Senator from Washington (Mr. Jackson) indicated that that was true. But is it not a fact that it is subject to the

Administrative Procedure Act with respect to heating pricing changes and not subject to congressional action?

Mr. JACKSON. The President has to make findings pursuant to the Administrative Procedure Act.

Mr. MCCLURE. That is correct.

Mr. JACKSON. And he must submit them to Congress, as set forth in the conference report, **section 110(b)**; and they must be supported by a preponderance of the evidence.

Mr. MCCLURE. By substantial evidence.

Mr. JACKSON. A preponderance of the evidence.

Mr. MCCLURE. That is correct. A court proceeding is necessary to change the price in accordance with the course of events.

Mr. JACKSON. A court challenge is possible, yes, if the findings have no basis in fact or are arbitrary and capricious.

Mr. GRAVEL. I wonder if the Senator from Washington would be willing to answer some questions for me, since he has been generous in responding to the questions of others.

I did not quite get the figures for 1973.

Mr. JACKSON. It is $3.40, and it rose in 1973.

Mr. GRAVEL. It is $3.40, and it rose to——

Mr. JACKSON. To $6.94, the national average.

Mr. GRAVEL. That means that anybody who had a pool of oil that had a substantial accretion of value, without any additional cost—and that is included in the reasoning for the rollback——

Mr. JACKSON. That is correct.

Mr. GRAVEL. What would be the other part?

Mr. JACKSON. We have not reached the bottom price. The 29 percent of the domestic crude oil being produced today is no longer regulated, as I pointed out under the law, as we have interpreted it under the Mandatory Allocation Act. I think it is illegal. I think there is a requirement that the President put a ceiling on everything except stripper wells.

But the point is that the word we had from the administration was that by the end of this year the total amount decontrolled would run about 42 percent of domestic production. So the price has been and is going up every week.

Mr. GRAVEL. I do not choose to quarrel with the Senator on that matter. I would like to get to the fundamentals, because we can become lost in numbers.

When we get down to numbers, I think that what the Senator objects to is that if somebody owns a pool of oil, and then the Arabs increase their price of oil, which raises the umbrella anew, he enjoys that economic benefit.

Mr. JACKSON. The Senator seems to agree with my position.

Mr. GRAVEL. I just pointed out——

Mr. JACKSON. I want to understand what we are talking about. Under my rationale, it is very simple. Prices have gone way up, but production has not moved.

Mr. GRAVEL. Let us talk about values. Suppose I own a pool of oil. I have not done one thing to it. But because the Arabs have raised the price of oil, it is worth twice as much as it was before. The Senator now wants to——

Mr. JACKSON. I just want to object to a windfall profit.

Mr. GRAVEL. I am not quarreling about that. I want to be sure of what the Senator is talking about. If I have a million barrels of oil, and they are worth $5.50 a barrel, and the price goes to $6.50, the Senator is arguing that I should not enjoy the $6.50.

Mr. JACKSON. Obviously, the whole thrust of the price increase argument is to bring in the new production.

Mr. GRAVEL. That is another argument.

Mr. JACKSON. What argument is the Senator making?

Mr. GRAVEL. Suppose the Senator from Washington owns a duplex, and real estate values go up, but he has not done a thing to the duplex. Suppose he rents the duplex. Under the same philosophical approach, would he not be amenable to passing a law so that the increased value could be added to what an individual would have to pay?

Mr. JACKSON. Now look, let us not compare duplex apartments with the oil industry. The oil industry is a business affecting the public interest.

Mr. GRAVEL. My colleague says that land is the most vital part of the economic system. He implies that we can turn around and destroy the economic values in oil, but that it is different in regard to land.

Mr. JACKSON. We argued that the last time, with wheat and meat in February. My wife and I stopped eating meat, but can we stop using gas? We are talking about two totally different things.

Mr. GRAVEL. We can sooner live with less gasoline than we can with less meat, because we need a certain amount of meat in order just to be able to walk around. So what comes first is food. Now I want to get the record clear——

Mr. JACKSON. Is there a substitute for gasoline?

Mr. GRAVEL. I want to get the record clear that philosophically it is OK to roll back economic gains in the oil industry, but it is not OK to do it with land; is that correct?

Mr. JACKSON. The Senator knows it is absurd to try to compare two different situations. The point is that the oil industry is a business affecting the public interest. It goes to the very lifeblood of the economy of the country. The public has learned to get by without meat. We have had our meatless days, as the Senator knows. But can we, in this country, go for long without petroleum? To do so would bring the economy to a grinding halt. But we could go without meat, or change to eating fish or other proteins, but we cannot go from oil to something comparable to oil and still get the energy we need. It is that simple.

Mr. GRAVEL. The point I have made with the Senator from Washington is the crux of this entire matter; and that is, for some unknown reason we throw away the economics book with respect to oil. But when it comes to food and other areas we use a different standard.

I submit that if we really want to stop inflation—and I hope that is the motivation of my colleagues—the way to do it is not by government edict. If we could do it in oil, if we could pass a law to rollback prices on oil, then why not do it in other areas. Let us roll back this ungodly inflation that afflicts us all. Why not do it?

Mr. JACKSON. Did the Senator not vote for the Economic Stabilization Act?

Mr. GRAVEL. Yes; and I made a mistake. I hope that we have the opportunity to repeal that act. You know something, Senator, I not only made that mistake, but I voted for your Allocations Act, and that was an even bigger mistake. [Laughter.] Because if there is anything that has fouled up this country since——

Mr. JACKSON. Well now, if the Senator will yield—

Mr. GRAVEL. Let me finish. We have a beautiful example here. We in the United States have the opportunity to let the market clear itself and, thereby, provide people with energy. But what did we do? We turned around and jumped into the marketplace and established these allocations.

In Germany, they did not do that, and today there are no lines in Germany waiting for gasoline. The price is up there, as it is here. So if that does not prove one thing about the idiocy of the Government's going into the marketplace and destroying the semblance of sanity we have left, I do not know what does.

So what have we done here in this country? We have put the lines in. It was the Government that created the lines waiting at the gas stations. We talk about the cost. What does it cost the average taxpayer to wait in line, spending an hour or 2 hours or 3 hours a week? Figure that out. Say they work for $5 or $10 an hour—compute that—that is about three times what his gasoline is costing him. So I think it would be cheaper to double the price of the gasoline. He would still be better off.

So we put him in the lines. The price of gasoline still goes up. But if we could pass a law to stop inflation, we would have done that a long time ago.

What the President is referring to—and I find myself very few times in agreement with President Nixon—unfortunately, his travail these days will prevent him from really stating the point strongly, but he stated it correctly when he said: "This will cause inflation."

I should therefore like to ask my colleague from Washington, why would he, or why would I, as an investor, turn around and invest any money to find oil in this country when we can find oil abroad and then sell it back to ourselves at twice the price? I ask my colleague, would he invest his money that way?

Mr. JACKSON. I have no interest in oil or indeed in any stocks. Let me point out to my good friend that when the country sees the first quarter earnings reports of the oil companies for 1974, they will get the shock of their lives. The profits in this industry are so scandalous that the word is around in Wall Street that the industry is looking for all sorts of diversification. The industry wants to buy up non-oil industries. They are going into real estate—anything to get depreciation, or write-offs, or artificial losses, to shelter their huge earnings from oil.

Mr. GRAVEL. Well, I ask my colleague, why would they do that if oil is so good? They would keep their money there. But they are going into real estate because it is no good.

Mr. JACKSON. The Gulf Oil Co. wants to buy the Ringling Brothers Circus.

Mr. GRAVEL. Right, because it is no good in oil. They might as well run a circus, particularly when we are managing it. [Laughter.]

The PRESIDING OFFICER (Mr. Helms). The Senator from Washington (Mr. Jackson) has the floor.

EXEMPTION OF MAJOR CATEGORIES OF CRUDE OIL FROM PRICE CEILINGS UNDER THE ALLOCATION ACT IS CONTRARY TO LAW

Mr. JACKSON. Mr. President, on February 2, 1974, I wrote to Mr. Simon, the Administrator of the Federal Energy Office, concerning the President's authority to decontrol oil prices.

The purpose of that letter was to point out that section 4 of the Emergency Petroleum Allocation Act which was signed into law on November 27, 1973, requires that the President promulgate a regulation providing for the allocation of crude oil at equitable prices. In effect, the Allocation Act mandates that all crude oil be placed under some form of reasonable and equitable price ceilings.

I have yet to receive an answer to my letter. The administration has yet to cite any legal authority which authorizes the exceptions of new oil, released oil or State royalty oil from the price ceiling requirement of the Allocation Act. Yet, this is what the administration has done.

Instead, the President purports to justify his disregard of the pricing provisions of the Allocation Act by vetoing the Energy Emergency Act because it imposes reasonable price ceilings.

Mr. President, the administration's failure to impose price ceilings in accord with the Allocation Act is irresponsible. They have had 1 month in which to present any justification for this action. None has been presented.

Today's veto of the Emergency Act does not and cannot undo the price ceiling requirements of the Petroleum Allocation Act.

Mr. President, the administration's action in exempting major categories of crude oil from all price ceilings is, in my view, illegal. It violates the clear and plain meaning of the law.

It is apparent that if the law is to be enforced, Congress will have to take specific action to set and establish reasonable price ceilings.

This is what the Congress did in adopting section 110 of the Emergency Energy Act.

The issue now before the Senate is whether the Congress is going to roll over and play dead.

Are we going to permit actions which are in clear violation of the law to take place?

Are we going to allow the Arab cartel to set domestic oil prices?

Are we going to ignore the needs of the American consumer?

In short, is Congress going to exercise independent judgment in making national energy policy?

Mr. President, I ask unanimous consent that a letter and a statement discussing the President's authority to exempt categories of crude oil from price ceilings under the Allocation Act appear in the Record.

Mr. President, I further ask that the Record include the communication Senator Fannin sent the Members yesterday commenting upon my statements on the floor debate February 18 and 19, together with my point-by-point reply to his comments.

There being no objection, the material was ordered to be printed in the Record, as follows:

FEBRUARY 2, 1974.

Hon. WILLIAM E. SIMON,
Administrator, Federal Energy Office,
Washington, D.C.

DEAR MR. SIMON: At the conclusion of the testimony of Administration witnesses at the Committee's hearings on Friday, February 1, 1974, on S. 2885, a bill I introduced to roll back and establish price ceilings for crude oil and refined petroleum products, questions were raised concerning the Administrator's authority to exempt new oil, released oil, and State royalty oil from the regulations implementing the price ceiling provisions of the Emergency Petroleum Allocation Act.

Legal Counsel to the Committee has advised me that the Administration is in apparent violation of the pricing requirements of Section 4 of the Allocation Act. Section 4(a) of the Act provides that "the President *shall* promulgate a regulation providing for the mandatory allocation" of crude oil and petroleum products "in amounts . . . and at prices specified in (or determined in a manner prescribed by) such regulation" (emphasis added).

Section 4(b)(1)(F) provides that the regulation "*shall* provide for" . . . "equitable distribution of crude oil, residual fuel oil, and refined petroleum products at *equitable prices* among all regions and areas of the United States and sectors of the petroleum industry . . ." (emphasis added).

Section 4(e) provides one exception to this requirement that all oil prices be placed under price ceilings. Section 4(e)(2) provides that the regulation promulgated under Section 4(a) on allocations and on prices "shall not apply to the first sale of crude oil . . ." from stripper wells.

Section 4(e)(1) provides a procedure for suspending allocation authority *if* the President makes and transmits to the Congress a finding that mandatory allocation is no longer needed to achieve the purposes of the Act. This procedure *does not* permit suspension of the Act's requirement that oil prices be "specified in (or determined in a manner prescribed by)" the regulation required under section 4(a) of the Act.

I would appreciate it if you would furnish me with a report and a legal memorandum on this matter. I am specifically interested in your views as to the legal authority for exempting new oil, released oil, and State royalty oil from the price requirements of the Emergency Petroleum Allocation Act.

As I understand it, the Administration's position on allowing major exemptions to price ceilings may be based in part upon an interpretation of the Conference Report on the Allocation Act which was contained in a letter of November 13, 1973, to me from Dr. John T. Dunlop, Director of the Cost of Living Council. Dr. Dunlop's letter dealt with his understanding of provisions of the Report dealing with stripper wells, pricing and personnel. In connection with the adoption of the Conference Report, I had Dr. Dunlop's letter together with other materials printed in the Congressional Record and indicated general concurrence in Dr. Dunlop's interpretation.

On further review of the clear meaning of the Act and Dr. Dunlop's November 13 interpretation it is my view that the Act does not permit these exceptions to the price requirements of the Act. To the extent I expressed concurrence in Dr. Dunlop's interpretation of the pricing authority and directive in the Act I was in error. In any event, the concurrence of any single member of Congress in an interpretation of the law does not change the meaning or requirements of the law.

I do concur in Dr. Dunlop's statement in his letter that ". . . the administering agency which has been delegated price control authority under both statutes would be obligated to comply with the provisions of both."

I appreciate your assistance in this matter and I assure you of my cooperation and assistance in achieving a new level of stability and reasonableness in petroleum prices. As you know, the Conference Committee will meet on Monday on S. 2589, the Energy Emergency Act, to work out a resolution of the controversy over the windfall profit provisions of the Conference Report. As you know, I and other members of the Conference Committee will be proposing language to mandate a price ceiling for oil which has been exempted from price controls. I have directed the Committee staff to meet with representatives of your office to discuss

how this can best be achieved. Meetings were held last night and a further meeting is scheduled at noon today.

With best regards,

Sincerely yours,

HENRY M. JACKSON, *Chairman.*

SENATOR JACKSON'S REPLY TO SENATOR FANNIN'S MARCH 5 LETTER

THE RELATIONSHIP OF PRICES AND PRODUCTION

Senator Jackson said that:

Respected oil analysts . . . say that these [current] price levels will not buy increased supply.

Senator Fannin says that:

Due to existing prices the U.S. petroleum industry plans to invest over 19.5 billion dollars in 1974 (19,531,000,000), of which $12,134,000,000 is for exploration and production of petroleum. Funds budgeted for drilling and exploration ($7,669,000,000) represent a 16 percent increase over 1973. These investments would not be made unless the industry expected to be able to increase supply. A price rollback would result in investment cutbacks and thereby decreases in production.

The fact is that:

Neither Senator Fannin nor anyone else has presented any evidence or analysis to show that 1974 investment in domestic oil exploration would be greater with crude oil prices at $10 per barrel than they would at $7.09 or even $5.25. Mr. Simon has repeatedly said that a price of about $7 will bring forth as much effort "as we reasonably can expect to get."

CONSTRAINTS ON SUPPLY

Senator Jackson said:

The real constraint on supply today is not price . . . the constraints today are shortages . . . manpower, tubular goods, drilling rigs . . .

Senator Fannin says that:

Higher selling prices for crude enable oil producers to "bid" steel, manpower, and other materials away from other sectors of the economy. This price mechanism is the most efficient allocator of resources of any kind. On February 26, 1974, the Cost of Living Council removed oil field machinery from price controls, which should permit higher prices for such equipment. The result is that manufacturers of such equipment can now make a profit on the manufacture of that equipment, which should help ease the material shortages Senator Jackson alluded to.

The facts are that:

Supplies of certain critical equipment and materials for drilling are in absolutely short supply that no price increases can remedy. Order backlogs for tubular drilling goods average at least one year. Neither Mr. Fannin nor anyone else has offered any evidence or analysis showing that the supply of these inputs would be greater with $10 crude oil than at $7.09 or $5.25.

THE NEED TO TIGHTEN PRICE "LOOPHOLES"

Senator Jackson said:

. . . loopholes enable the unscrupulous to take advantage to double the value of their "old" oil—their presently producing fields—by simply drilling and pumping the oil through new wells.

Senator Fannin says that:

This is not true. "New" production must be from a new or different lease, not only from a new well, unless the total production from the lease is greater than the rate of production in 1972 (month-for-month). Only the excess of current production over the base period is "new" oil, from any given lease. Furthermore, excess or incremental production credits not used in any given lease may not be credited to another lease. The incentive to produce new crude is not a loophole. Before any benefit can be derived new oil must in fact be produced."

The facts are that:

The same producing field often lies under more than one "property" or lease. It is indeed possible to produce "new" oil from such fields at the expense of "old"

oil, either by draining them from neighboring previously undrilled leases, or by increasing production from wells on some leases on the field at the expense of others.

More importantly, Professors Franklin Fisher and Edward Erickson have shown that even small increases in field prices reduce success rates in exploratory drilling by shifting drilling effort from the risky search for large reservoirs in new areas to the more certain development of small reservoirs in old fields. Where the inputs to drilling are in limited supply, very large price increases can be expected to result in small short term production gains from more intensive drilling of old fields, but at a substantial cost in new discoveries. It is not obvious whether that large price increase for crude oil (such as the doubling and tripling that has taken place in the last year) would actually increase rather than decrease production one year from now.

THE ENERGY EMERGENCY ACT AND THE U.S. CONSUMER

Senator Jackson said that:

An increase of 34,000 barrels per day . . . is what the American consumer is getting in the way of new supply at a cost of $20 million a day.

Senator Fannin says that:

About 30% of total production is free of price controls. If it all were selling at $10.35 per barrel, which it is not, and were rolled back to $5.25 per barrel, or cut $5.10, the so-called saving would be $16.6 million. This might reduce pump prices by one cent per gallon, but would have considerable negative impact on future supply expectations. The American consumer already spends over $140 million every day on gasoline alone, of which State and Federal taxes amount to over $33 million per day.

The facts are that:

The savings from rolling back all domestic oil to $5.25 would be:

February 1974, $16.3 million per day; December 1974, $24.5 million per day.

February 1974, $2.4 cents per gallon; December 1974, $3.0 cents per gallon.

The savings from rolling back "new" and stripper well oil to $7.09, released oil to $5.25 would be:

February 1974, $11.5 million per day; December 1974, $21.4 million per day.

February 1974, $1.7 cents per gallon; December 1974, $2.6 cents per gallon.

The basis of the foregoing calculations is as follows:

	1974 (million barrels per day)		
	February	December	Price
Imports	5.1	8.0	$10.35
Stripper oil	1.4	1.4	10.35
New oil	1.2	2.0	10.35
Released oil	.6	1.4	10.35
Controlled oil	7.7	6.1	5.25

THE PRICES TO BE PAID FOR STRIPPER WELL PRODUCTION UNDER S. 2589

Senator Randolph said:

. . . in the State of West Virginia, when we talk about the maximum for stripper production it would come to approximately $8.00 a barrel rather than $7.09 that is frequently referred to [by Senator Jackson]. . . . There is flexibility in this provision, **Section 110,** to deal with the special situation regarding stripper wells and secondary and tertiary recovery . . .

Senator Jackson said:

The Senator (Mr. Raldolph) is correct.

Senator Fannin says that:

The price of stripper well crude under S. 2589 would be limited to $5.25 per barrel unless raised to $7.09, except for Pennsylvania grade crude such as is produced in West Virginia. Thus, the "flexibility" referred to by Senator Randolph and agreed to be Senator Jackson is limited to Pennsylvania grade crude production. In November of 1973, Pennsylvania grade crude production was only 36,200 barrels a day as contrasted to the total of 9,144,000 barrels a day

produced within the United States. The crude to which the "flexibility" in price referred to by Senator Randolph applies to only .04 percent of total national production. Thus, for all practical purposes, the price ceiling on U.S. crude production established by S. 2589 would be $5.25 per barrel, with a possible upward adjustment to $7.09—not $8.00 per barrel as otherwise alleged.

The fact is that:

Both the $5.25 and $7.09 figures are *average* price ceilings, not absolute ceilings. The ceiling provided by paragraph (3) of the rollback provision is "the sum of—

"(A) the highest posted price at 6:00 a.m. local time, May 15, 1973, for that grade of crude oil at that field, or if there are not posted prices in that field, the related price for that grade of crude oil which is most similar in kind and quality at the nearest field for which prices are posted; and

"(B) a maximum of $1.35 per barrel."

This provision results in an average price of $5.25, but it provides prices across the nation ranging from about $3.30 to $6.50, depending upon the grade and location of the crude oil.

Paragraph (5)(A) provides that no ceiling price "shall exceed the ceiling price provided in paragraph (3) . . . by more than 35 percent."

This provision would permit an average price no higher than $7.90, but the ceiling for individual grades of crude oil in certain fields might be as high as $8.50.

PROPANE PRICES

Senator Jackson said:

I had the words "including propane" added to the provision so as to remove any question about having it covered. Specifically, we estimate a rollback of about 50 percent in the price of propane if this Conference report is adopted. Where the average national price is now about 42 cents, it would go back to about 22 cents.

Senator Fannin says that:

Secretary William Simon stated that "Section 110 of the conference report . . . which calls for a rollback of crude prices to $5.25 per barrel with a ceiling of $7.00 per barrel would have little impact if any in further reducing the price of propane. We feel the action we have already taken should be sufficient to protect American consumers who are dependent upon propane."

What Senator Jackson failed to state is that 68 percent of the propane produced in the United States comes from natural gas wells, all of which are not covered by S. 2589. The Act, accordingly, applies to only 32 percent of U.S. propane supplies. Most of this 32 percent issued as refinery fuel and therefore never reaches the consumer. Thus, if crude prices were set at $7.09 per barrel, the decrease in propane prices would be only a fraction of a cent, not 20 cents.

The facts are:

The principal reason for high propane prices is that the Cost of Living Council and the Federal Energy Office have not attempted to control the price of propane produced from natural gas liquids. They have authority to do so under the Economic Stabilization Act and are directed to do so under the Emergency Petroleum Allocation Act. One of the purposes of Senator Jackson's colloquy quoted by Senator Fannin was to call the attention of FEO to Congress' intention that the price of natural gas liquids, lease condensate, and propane derived from them be covered by price regulations.

Mr. BARTLETT. Mr. President, I should like to point out that the conference committee report, if it is adopted into final law and the veto is overridden, will result in a reduced amount of money for the exploration of oil and gas. A number of companies have testified that they would reduce their efforts this year by one-third.

Commenting on the statement by the distinguished chairman that production has continued to drop, I have here the quarter production for February 1, 1974, which shows 9,179,000 barrels, which represents an increase of 26,000 barrels a day. There has been a bottoming out and a slight turnaround. We have the possibility of continuing this momentum that now exists to increase our supplies, or we have the opportunity to stop it and to stop it in its tracks.

It makes no sense to me to become more dependent on unrealiable foreign oil.

Mr. JACKSON. I think the Senator might be interested in the Oil and Gas Journal for March 4, which is a pretty good source, where it says that the 4-week average of domestic production ending February 22, the latest week, was 9,195 million barrels, 13,000 less than the week before, and 183,000 less than a year ago. The change from a year earlier is a fall of 1.96 percent.

Mr. BARTLETT. I agree with the distinguished chairman that the comparison with a year ago is down. I know that he agrees with me that the comparison of the last week is up. I was refuting his statement saying that progress at the present time is decreasing rather than increasing in production.

But the important thing is that today we are 22 percent—1973—ahead of 1971 in the number of wells being drilled. The distinguished chairman knows that the results of drilling are in direct relationship to the amount of drilling done. He knows that the amount of drilling planned for 1974 is large and a significant increase over that of 1973, but that these plans will not be consummated if he is successful today and the House is successful in overriding the presidential veto. The same thing will happen again as has happened before, that by controlling prices we will reduce the supplies available domestically. We will increase reliance on foreign oil and we will be that much more subject to harassment by them, either with high prices or embargoes or both. So I think that a vote with the distinguished chairman is a vote for continued long lines at the filling stations. It will be a vote for more unemployment. It is a vote for less productivity in this country, less opportunity for this country to be competitive with foreign countries, and less opportunity for us to increase our gross national product, to increase the standard of living, and to remain the No. 1 power.

I think it is vital that we realize that we are at the crossroads, that we do have the opportunity now to bring on additional resources. With the prices that now exist, we can have an opportunity to develop the liquefaction and gasification of coal.

Mr. BARTLETT. We have an opportunity to have extraction of oil from shale and tar sands. But this will go out the window if the veto by the President is overridden today.

It seems strange to me that there seems to be a preference by many people to buy oil and gas from foreigners rather than to buy it from domestic producers and to pay a higher price to foreigners than to domestic producers. As a matter of fact, they are dissatisfied at the present time with paying American producers 61 percent of what they are willing to pay foreign producers, and they want to reduce that to the neighborhood of 50 percent.

I should like to point out to the distinguished chairman that the exploratory locations compared to a year ago are up 33 percent, and the development locations are up 25 percent.

Mr. President, the conference report on Senate bill 2589 contains provisions which continue the policies that the majority of Congress has advocated for the past 20 years. Those policies, more than anything else, have gotten us into the critical situation in which we find ourselves today.

If this bill becomes law, rationing of gasoline and higher and higher prices will most likely be inevitable, for we will be discouraging the

production of relatively cheap domestic crude oil and encouraging more imports of higher priced foreign oil—if available at all.

The majority of Congress has long favored policies of Government controls that have led to the current energy crisis. It may be good politics—but it is not good economics for the benefit of the consumer.

The direct and indirect regulation of the price of natural gas at the wellhead and oil has caused dwindling supplies of refined products; and more recently, the policy of allocating the shortages and trying to force rationing upon the public have done nothing to increase supplies of energy for the consumer.

Now, the same congressional leaders seem to advocate paying foreigners for their natural gas and crude oil rather than buying from domestic producers.

The leadership of Congress has been "investigating to death" the petroleum industry. Almost every committee of Congress has a subcommittee on energy. Almost daily some form of harassment of the industry, either by innuendo or inaccurate or misleading facts, comes out of the Congress.

Congress is not facing up to the problem of shortages. Congress, seemingly, is not concerned about how to get from here to there—to get from a condition of shortages to a condition of sufficient energy.

During the late fifties and early sixties shortfall profits, domestically, drove the multinational companies overseas—in search for cheaper and more profitable oil. Congressional leaders, ignoring the high prices and the embrago of foreign oil resulting from overdependence on foreign sources of supply, are favoring once again controlled and reduced domestic prices of oil which will once again drive multinational companies overseas—in search for more profitable oil.

By overriding the President's veto, these same people are assuring the need for more imports of foreign crude oil and products. The Congress is again encouraging the development of foreign resources rather than our own domestic resources. On the average, Congress is not willing to continue to pay an American oil producer 61 percent of the price of oil that they are willing to pay a foreign producer. They only want to pay the American producer 50 percent of what they are willing to pay a foreign producer on the average. Why?

During the 1960's there were many advocates for opening up the gates to cheap imports. The Government, during the 1960's followed a policy of controlled prices for natural gas and depressed prices for crude oil because of threats by various administrations to import more cheap foreign oil.

So far, Congress continues to follow the same policies, except in an even more restrictive manner, that have gotten us into this energy mess. Congress continues to advocate controlling the wellhead price of natural gas, and even rolling back in the law the price for domestic crude oil, plus the importation of larger amounts of expensive and unreliable foreign oil.

Congressional policies continue to exacerbate the domestic energy supply situation by holding down prices while advocating paying higher prices for foreign crude oil.

Congress is advocating less productivity and less ability for the Nation to compete with foreign countries at a time of domestic and worldwide shortages.

We may as well ask the Arabs to run our domestic oil industry, too. It seems the leadership of Congress has more faith in the foreign oil producing countries than it does in our own domestic oil industry.

Mr. President, these are the same policies that got us where we are today, and they are the same policies that will lead us to long lines at the service stations, more unemployment, higher inflation, rationing, and greater dependence upon unreliable sources of crude oil to the extent that we will become a second-rate world power.

In my opinion, a vote for this measure is a vote to make the United States become a weak and stumbling giant, and the main concern that other nations will have for us is that we do not hurt them in our fall.

Mr. President, I associate myself with the remarks of the distinguished Senator from Oklahoma. He is absolutely right.

I should like to read for the benefit of the Senate an item that appeared on the UPI wire the day before yesterday:

> The price rollback feature of the emergency energy bills which President Nixon has threatened to veto would cost the Nation 11.5 billion gallons of domestic oil within a year; a leading independent producer said today.
>
> President George Mitchell of the Texas Independent Producers and Royalty Owners Association told the West Central Texas Oil and Gas Association that oil price controls likely will prevent the drilling of 3,000 new wells in the United States as it is. He estimated that at least 275 million barrels of oil production probably would be discovered in those wells that will not be drilled, and he said the oil price rollback, if it stands, will styme efforts to produce substantial amounts of marginal oil from existing wells.

Mr. President, if we fail to sustain this veto, what we are going to do is probably wipe out approximately 12 percent of our domestic crude production that is marginal production. To try to make scapegoats of the major oil companies or try to roll back prices for some cosmetic effect is not going to solve the shortage. As a matter of fact, it is going to exacerbate the shortage.

With respect to all this talk about oil company profits, the oil companies buy their crude from independent producers. So what we are talking about is the oil companies as customers. This does not affect their profit picture at all. It might be that they will have to pass along higher prices to the consumer. But it will also mean that even higher priced crude will not have to be imported in greater quantities.

I cannot understand why the Members of the Senate would prefer that we buy foreign crude oil, Middle Eastern crude oil, at a greater price than buy domestic crude at a lesser price, albeit a higher price than we are accustomed to pay. It does not make any sense.

There is another aspect of this bill that should cause it to fall, and that is the provision known as **section 108**, which would transfer the conservation functions of the States to Federal officials in the executive branch, because it would permit these officials to second guess so-called MER, or maximum efficient rate of production. That could result in taking conservation management out of the hands of State authorities who are well experienced and familiar with the problem and placing it in the hands of Federal administrators who do not know what they are doing. If the Federal Government forces these wells to produce at above the maximum efficient rate for immediate short-term gain, in terms of additional supplies of crude, we will be selling ourselves down the river in the future, from the standpoint of trying to maintain some reasonable degree of self-sufficiency in crude oil in the United States.

I do not understand the apparent love feast between some Members of this body and the Arabs. Rather than buy domestic oil, they would buy Arabian oil and pay a higher price for it. The same syndrome is apparent in their refusal to support measures to deregulate the price of natural gas. Let the mechanism of the marketplace work its will.

We pay more for our natural gas that we produce in Texas than people pay in the Northeast, because they get it at an artificially low price as a result of regulation. We do not complain about it in our State. We are delighted to have the gas.

What I am saying now is that if Senators want a source of energy in this country that is secure—that is to say, largely a domestic source—they had better vote to sustain the President on this bill, or I promise that they will destroy marginal production in this country and will stifle new drilling in the process.

Mr. BARTLETT. I believe that 4 of the 5 largest producers of oil and gas are in the 14 largest consumer State categories of all the States. Texas is one, Oklahoma is one, California is one, and Louisiana is the fourth.

Mr. TOWER. The Senator is correct. There is a lesson to be learned there.

Mr. RANDOLPH. Mr. President, in vetoing the Energy Emergency Act, President Nixon is wrong in his purposes and in error in his reasoning. As suggested by a March 3, 1974, editorial in the Washington Post, this action provides "somber evidence of the degree to which the President has now removed himself from the concerns of his fellow citizens, and the isolation in which he wraps himself."

Shortages have dealt a deft blow to the American consumer who has been subjected to energy shortages, to threatened strikes, and in many instances, to unemployment and to higher prices. After being called on to institute voluntary energy conservation actions by lowering the thermostats, by driving autos and trucks slower, by carpooling, and by many other self-motivated conservation initiatives—the American people are now being told by the President's veto message that they are going to have to pay more, that they are not going to be eligible for special unemployment compensation, and that they are not going to be assured of the minimum supply that rationing can provide.

Mr. President, let us examine the validity of some of the reasons used by President Nixon to justify his veto of the Energy Emergency Act.

PRICE ROLLBACK

Speaking of price rollbacks **[Sec. 110]** the President said—

The Energy Emergency Act would set domestic crude oil prices at such low levels that the oil industry would be unable to sustain its present production of petroleum products, including gasoline. It would result in reduced energy supplies, longer lines at the gas pump, minimal, if any, reduction in gasoline prices, and worst of all, serious damage to jobs in America. Unemployment would go up, and incomes would go down.

The Chief Executive added—

The rollabck would not only cut domestic oil production, but would also retard imports since in the present environment oil companies are reluctant to import oil and gasoline that would have to be sold at prices far above the domestic prices.

So says the President. I do not agree with his argument. He added further—

As we call on industry to provide these supplies, I feel very strongly that we must also insure that oil companies do not benefit excessively from the energy problem. I continue to believe that the most effective remedy for unreasonably high profits is the windfall profits tax which I have proposed. That tax would eliminate unjust profits for the oil companies, but instead of reducing supplies, it would encourage expanded research, exploration and production of new energy resources.

But let us examine the facts. In mandating a rollback in the price of crude oil and refined petroleum products, the Congress is simply directing the President to exercise authority he already has under the Economic Stabilization Act of 1970 and the Emergency Petroleum Allocation Act of 1973.

The President also is incorrect in his assumption that shortages are going to vanish overnight simply because crude oil prices are allowed to rise. Between January 1973, and January 1974, the average domestic price has doubled from $3.40 to $6.75 a barrel. Yet domestic production has climbed by less than one-third of 1 percent—34,000 barrels out of a total 10,893,000 barrels per day during this period.

The real constraint is not oil prices but shortages of trained manpower, tubular goods. drilling rigs, and many other materials needed by this high-technology industry.

The legislation guarantees a minimum domestic average price of about $5.25 with a ceiling price of about $7.09 a barrel. These prices seem realistic for the next year compared to investment requirements. Senator Jackson in Senate debate on the conference report recalled that in January 1974 the Federal Energy Office noted—

No one knows exactly what the long-term supply price is, as no one can predict in the future that clearly. Our best estimate is that it would be in the neighborhood of $7 per barrel within the next few years.

In December 1973 the Department of the Treasury said—

The long-term supply price of bringing in the alternate sources of energy in this country, as well as drilling in the Outer Continental Shelf and the North Slope—is $7 a barrel, current 1973 dollars.

Currently the average international oil price is $10 per barrel but the majority of this is a tax that goes to the producing countries not to the international oil companies.

Should domestic oil prices climb to this artificial price, there will be unprecedented profits to oil companies borne on the shoulders of the American consumer, without any substantial increase in supplies.

It is more in the public's interest to prevent excessive profits before they occur rather than tax them after the fact—as suggested by the President. Under such an approach, the consumer still must bear the expenditure of high-cost energy supplies, while profits are drained into general tax revenues.

UNEMPLOYMENT COMPENSATION

After admitting that unemployment will occur because of the energy crisis, the President's second major premise is that—

The Energy Emergency Act is also objectionable because it would establish an unworkable and inequitable program of unemployment payments [Sec. 116].

Under it, the Government would be saddled with the impossible task of determining whether the unemployment of each of the Nation's jobless workers is "energy related."

Mr. President, I call to the Senate's attention the expressed concern over the coverage of this provision [Sec. 116] is unwarranted. Under the conference report on S. 2589 the President by regulation is given total discretion to define the nature of the criteria or formulas to be followed by States before they would be entitled to receive grants in aid for energy-related unemployment compensation. Sufficient flexibility would be available within the authority to restrict coverage sufficiently to overcome President Nixon's expressed concerns.

This authority is being provided as an interim measure for 1 year pending enactment of long-term legislation to strengthen our regular unemployment insurance program. As an emergency action it must be emphasized that such coverage could not exceed 1 year. The President's accusation that this program is a "shoveling out the taxpayer's money under a standard so vague and in a fashion so arbitrary," it seems to me unwarranted.

A MATTER OF PERSPECTIVE

I agree with the President's statement that—

The energy shortage has been a pressing problem for the American people for several months now. We have made every effort to soften the impact of this problem. We have come through this winter without serious hardship due to heating oil shortages.

However, Mr. President, there is no question but that this was due principally to the voluntary actions of American citizens and the blessing of a much warmer winter than anticipated. The administration's mandatory petroleum allocation is only a few weeks old.

I am convinced that the United States faces a deepening energy crisis and extraordinary steps are needed to assure millions of citizens that steady energy supplies will be available.

On November 7, 1973, President Nixon made a major address to the American people on the energy emergency facing our country. On the next day a special message was sent to the Congress proposing that

The Administration and the Congress join forces and together, in a bipartisan spirit, work to enact an emergency energy bill.

It was the President's expressed hope that—

By pushing forward together, we can have new emergency legislation on the books before the Congress recesses in December.

Despite renewed assurances from the President, the full cooperation of the administration with the Congress has not been witnessed.

In the President's own words—

Unfortunately, there are some who have chosen to capitalize on the Nation's energy problems in an effort to obtain purely political benefits. Regrettably, the few who are so motivated have managed to produce the delays, confusion, and finally the tangled and ineffective result which is before me today. The amendments, counter-amendments, and parliamentary puzzles which have marked the stumbling route of this bill through the Congress must well make Americans wonder what has been going on in Washington while they confront their own very real problems. We must now join together to show the country what good government means.

Unfortunately this statement portrays the Congress as the obstacle to the enactment of necessary energy emergency legislation. The Con-

gress was prepared to act last December, if it had not been for administration opposition and an implied veto that took us back to House-Senate conference.

Then, last month, the Senate and the House of Representatives overwhelmingly endorsed the conference report on S. 2589.

Mr. President, among the needed authorities in the conference report is a provision creating a temporary Federal Energy Emergency Administration. Until more permanent authority is enacted, this authority is needed for the effective administration of the mandatory allocation program currently operated by the Federal Energy Office. [Sec. 103.]

The Federal Energy Office is functioning under Executive Order 11748 of December 4, 1973. All the Federal Energy Office's employees are on loan from other Federal agencies and there is little if any authority to hire the necessary personnel to effectively administer these programs.

This authority is needed so that direct appropriations can be provided for these vital programs. As expressed last week by John Sawhill, Deputy Administrator of the Federal Energy Office, at hearings before the Senate Interior Committee:

> I wish the Congress would give us a bill (to provide the necessary resources, particularly of personnel) so we had statutory base for our organization, so we could have some of the people onboard in the Chicago office, I don't know what the figures are, but we probably have 90 people detailed in from other agencies. How are we going to make a process work when yesterday somebody was a chicken inspector and today they are supposed to be running an allocation program.

Mr. President, the necessary authority for a temporary Federal Energy Administration is contained in the Energy Emergency Act, until such time as the Federal Energy Emergency Act is enacted.

This is one example of the numerous authorizations and mandatory provisions in this legislation which are needed to cope with the immediate energy crisis.

In his veto message President Nixon speaks to the need for emergency energy legislation. Among the needed authorities identified in his veto message are—

> We need the authority to require energy conservation measures. We need the direct authority to ration gasoline if, and only if, rationing becomes necessary, which it has not. We need the authority to require conversion of power plants, where possible, to permit the use of our abundant coal reserves.

I must stress. Mr. President, that these are the authorities and, vitally needed authorities, contained in the conference report on S. 2589. I will vote to override the President's veto.

Mr. President, we will decide this issue in a few minutes. I am certain that each Member will vote his conviction. I doubt that there is a sufficient number of Senators to provide the necessary two-thirds majority to override the President's veto. It will be demonstrated, however, that a substantial majority of the Members of this body disagree with the action of the Chief Executive.

Mr. GOLDWATER. Mr. President, it was very difficult for all of us in Congress to believe last fall that we actually faced and were in the middle of a fuel crisis in this country. I know from trips home that the people at home find it difficult to believe and that they no longer do.

What the American people are looking to us for is some relief. I suggest that the American people want fuel, the American people want gasoline, the American people want everything needed that comes from petroleum to provide heat, propulsion, and the other things we get from petroleum products. They do not want more regulation.

I asked the distinguished leader of this bill before we departed for the Christmas vacation to name for me where 1 additional gallon of gasoline was coming from the 32 bills we discussed, none of which had been passed. I did not get any answer except the Alaskan pipeline, and I suggested that had nothing to do with the present legislation.

Nor did the Elk Hills opening in northern California have anything to do with it. And I still claim the emergency measures we have taken have not given to the American people one thimbleful of gasoline for their cars. To sit here and debate day after day after day how we are going to regulate the oil companies, how we are going to cut down on their profits, how we are going to regulate and control, even down to the gasoline station operations, to me is senseless. I do not think the American people approve of it.

For instance, we need new domestic sources. For years—I would say 40 years—we have made those who engaged in fuel exploration almost criminals. We have discouraged such a person. We have talked against him. We have passed prohibitive regulations in the field of natural gas, and in my State we depend on natural gas to produce 52 percent of the copper produced in this country.

We want more fuel. That is what Americans want. When they look at what foreigners have to pay for gasoline, they realize how lucky we have been in this country year after year. They do not like to wait for hours in line for gasoline. I think Americans would be glad to pay a little more if they thought it was going to relieve fuel supplies. We need new domestic sources.

Do my colleagues know what we are going to do if this piece of legislation becomes law? We are going to discourage every small driller that can produce 10 or 12 barrels a day, who might produce 20 barrels, from producing anything. And at the present time that is the only place we are going to get additional petroleum.

We need refineries. I am told by people whose expertise I respect that we need 80 refineries now—not 5 or 10 years from now, but now. They tell me we have enough crude oil to make gasoline, but, again, we have discouraged this kind of investment in the past, and now that we need them, I do not know who is buliding the new refineries. We are talking about building one in Arizona, and I hope we will be able to go ahead with it. Instead of talking about regulating and excess profits and that sort of thing, we could have interested people to go ahead and invest and build refineries.

Another thing we need in this country and do not have—in fact, I think we have one, and that is off Long Beach, Calif., and it is not a modern facility—is the ability to offload the large modern tanker. Neither do we make the large modern tanker. They are being made in other places in the world. I was in Iran recently and saw at one loading dock 13 tankers of over 200,000 tons. Not one of those tankers could be unloaded in the United States, because we have not built the facilities. Again, instead of spending our time talking about regulation, and so forth, why have we not done something to make it a little en-

couraging for companies or people to build those badly needed offload facilities? We are not looking even at 200,000 ton tankers. In Iran they are providing for unloading 500,000 ton tankers, and we have no place in the United States now that can begin to take care of an offload like that.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GOLDWATER. Mr. President, I will vote to sustain the President's veto because the bill is pure, unadulterated, 100 percent hogwash.

Mr. MUSKIE. Mr. President, with respect to the comments just made by the distinguished Senator from Arizona (Mr. Goldwater), let me read from the President's veto message his view about the importance of the legislation which we are considering, and I read the following paragraph:

> We need the authority to require energy conservation measures. We need the direct authority to ration gasoline if, and only if, rationing becomes necessary, which it has not. We need the authority to require conversion of power plants, where possible, to permit the use of our abundant coal reserves.

These three needs which the President describes even now in a message vetoing the bill are essential national policy, he tells us.

Mr. President, he told us the same things last December, and it was in response to his urging and that of his administration that we in the Senate, and the two Houses in conference worked long days and long hours to iron out our differences and produce this kind of authority.

At that time there were just two hangups: One, the nature of the conservation authority we should give to the Energy Administrator, Mr. Simon; and two, the question of what we should do with respect to whatever windfall profits might be generated from the current situation by the oil companies.

The House was adamant on the so-called windfall profits provisions last December. There was no way to persuade the House to recede. And finally I offered an amendment which suspended the House provisions until January 1975, thus giving us a year to work out those problems.

In addition, I did my best to give the President flexibility with respect to the conservation authority that would be given to Mr. Simon.

When that work was all done, my impression was that, although there were some differences remaining, everybody concerned could live with it—the Senate conferees, the House conferees, and the administration advisers.

But, no; when the bill hit the floor, a filibuster was launched against those suspended windfall profits provisions, and the bill was killed in the closing hours of that session.

So when we came back in this session, we went through the same exercise again; succeeded in persuading the House to substitute, for its windfall profits provisions, the rollback provisions incorporated in the pending bill. And again those provisions were tailored to comments which had been made by Mr. Simon in behalf of the administration. He had said over and over again that he felt the price of crude oil should ultimately settle at about $7 per barrel. Using that figure, and indeed 9 cents more—$7.09 a barrel—the Senate and House conferees wrote in this rollback provision. **[Sec. 110.]**

Indeed, this rollback provision is attacked from the other side as permitting too much of an increase in the price of petroleum products. Because it is attacked from both sides, I suggest perhaps the provision we have pending before us is a reasonable one.

How high does the administration now think the price of domestic crude should go? We are not told, but on top of page 2 of the mimeographed copy of the veto message there is language which may give us a clue, and I read:

> The rollback would not only cut domestic oil production, but would also retard imports since in the present environment oil companies are reluctant to import oil and gasoline that would have to be sold at prices far above the domestic prices.

Is the President telling us in this language that he believes the price for domestic crude should rise to the levels set by the Arab oil-producing countries? That is what he seems to be saying. What he seems to be saying, therefore, is that if one consents to his veto message and drops the rollback provisions, we can expect that the price for American domestic crude will rise to meet the levels set in the international market by the Arab oil-producing states.

I cannot think of any other way of interpreting that language in the President's veto message.

It was because of the threat—that an arbitrary price would become the market price for domestic crude—that the House and Senate conferees felt impelled to write these rollback provisions into the bill.

I would like to say, Mr. President, that I will vote to override the President's veto because I feel that to abandon this effort to control prices will place those prices in the hands of an administration which seems to be pointing in the direction of the cartel prices set overseas.

Mr. President, I refer to the language at the top of page 2 of the President's veto message to indicate the reason for my position.

It was at the urging of the President that we give him the authority to require energy conservation measures and to ration gasoline, if necessary, that I was willing to work with my colleagues in this body and in the House in order to loosen up some of the environmental safeguards in our environmental law.

I felt that if Americans were going to be asked to conserve heating oil and gasoline by turning down their thermostats and by driving slower and by driving less and all of the other means by which we have been asked to conserve heating oil and gasoline that it was not unreasonable for those of us interested in environmental values to make some small sacrifice, provided that it did not mean the abandonment of our environmental goals.

If these authorities are so unnecessary at the present time that the President is impelled to veto this bill, then I would say to the President that, for one, I will take another look at any further request on his part to modify the environmental laws before I make a decision.

Mr. President, I have one other concern. I have the concern that the President may have an unstated reason for vetoing the bill, and that would be that he would want a more complete relaxation of the environmental laws than the bill provides.

We already know what the administration wanted to do to environmental laws under the guise of the energy emergency. In early November 1973 representatives of the administration submitted

an informal text of legislation that was printed for the use of the Senate Interior Committee on November 6, 1973.

A blanket gutting of the Clean Air Act was proposed in section 203, which reads in part:

The President may—

(4) acting through the Administrator of the Environmental Protection Agency, exempt, by order and without the necessity for hearing, any fuel-burning stationary source of air pollutant emissions from any emissions limitation in any regulation promulgated under the Clean Air Act or any State air quality statute or local regulation, which limitation may apply to such source in a manner which restricts the source's ability to use any fuel either allocated to it pursuant to this Act, or approved for use by it in conformity with the purposes of this Act; such exemptions shall be granted for a period not to exceed the duration of the energy emergency or as necessary to comply with section 203(3);

The same section called for exceptions from a Clean Water Act, even though the regulations to be waived had not even been proposed:

The President may—

(5) acting through the Administrator of the Environmental Protection Agency, exempt, by order and without the necessity for hearing, any refinery or other installation producing or finishing any fuel and any electrical generating facilities from any discharge limitations or other requirements in Federal Water Pollution Control Act (33 U.S.C. 1251 et seq), or any State water quality statute, and from any discharge or other limitations in any waste water discharge permit issued by any State or Federal agency pursuant to section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342), or any State water quality statute, whenever he determines that such exemption is necessary to assure adequate production of fuels or energy or to effectuate the purposes of this Act; such exemptions shall be granted for a period not to exceed the duration of the energy emergency or as necessary to comply with section 203(c);

(6) enter into appropriate understandings, arrangements, or agreements with concerned domestic interests, foreign states or foreign nationals, or international organizations, to adjust and allocte imports of fossil fuels, or take such other action, and for such time, as he deems necessary, with respect to trade in fossil fuels, in order to achieve the purposes of this Act.

Mr. President, I include the entire administration proposal printed November 6, 1973, at the end of my remarks.

Mr. President, there must be those in the administration who would use this veto as a way to get wider authority to undermine the environmental law. And, for that reason, I urge those of us who are concerned with me in the environment to vote to override the President's veto.

There being no objection, the proposal was ordered to be printed in the Record, as follows:

DRAFT OF THE EMERGENCY ENERGY ACT ADMINISTRATION PROPOSAL

TITLE I—FINDINGS AND PURPOSE

SEC. 101. FINDINGS AND DECLARATIONS.—The Congress hereby finds and declares that:

(1) Adequate energy supplies are essential to the security of the Nation and the maintenance of its defenses at home and abroad.

(2) The availability of clean, reasonably priced supplies of energy are equally critical to the maintenance of the health, safety, and welfare of the American people in insuring adequate supplies of food, shelter, health, education, employment, and emergency services.

(3) As the population increases and the demands for a better living environment increase, the American people will require increasing quantities of clean energy supplies.

(4) Responding to the demands for increasing quantities of clean energy will require more efficient utilization of available energy supplies and both the development of new domestic resources and, at least in the next decade, increased levels of imports of energy supplies from abroad.

(5) Disruptions in the availability of imported energy supplies, particularly crude oil and petroleum products, pose a serious risk to national security, economic well-being, and the health and welfare of the American people.

(6) It is necessary that the United State maintain the freedom to pursue a foreign policy independent of and unrestricted by the possible need to obtain supplies of natural resources including fossil fuels and other forms of energy from foreign states.

(7) Potential interruptions of important energy supplies, both in the near term and in the future, will require emergency measures to reduce energy consumption, increase domestic production of energy resources, provide for equitable distribution of available supplies to all Americans, and take appropriate international action to promote sharing of foreign supplies of fuels.

(8) The most effective use and development of domestic resources and imports of energy sources from abroad will require coordination of interstate and foreign commerce related to energy as well as a comprehensive national program which will take into account the diversity of needs, climate, and available fuel resources in different parts of the United States.

(9) The development of a comprehensive energy policy to serve all of the people of the United States necessitates the regulation of intrastate delivery and use of energy resources in order to insure the effective regulation of foreign and interstate commerce in energy service delivery.

SEC. 102. PURPOSES. The purposes of this Act are to—

(1) Provide the President with such authority as may be needed to meet any emergency deficiency in energy supplies, including emergencies resulting from foreign restrictions on the exportation of energy resources and the limitations of domestic supply and to insure the best use of existing resources consistent with the national security and the requirements of the health, safety, and welfare of the American people.

(2) Insure that measures taken to meet existing emergencies are consistent, as nearly as possible, with existing national commitments to protect and improve the environment in which we live.

(3) Minimize the adverse effects of such shortages or dislocations on the economy and industrial capacity of the Nation, including employment, to preserve the independent sectors of the domestic energy industries.

TITLE II

SEC. 201. DECLARATION OF EMERGENCY.—

(1) If the President determines that there is an actual or threatened shortage of essential supplies of fuel, including fossil fuels of any kind or description, or of energy, including electrical energy supplies which may impair the national security, economic wellbeing, health, or welfare of the American people, he shall proclaim the existence of an energy emergency, and shall in addition to other authority conferred by law, take such of the following actions as he deems necessary to deal with the actual or threatened shortage.

(2) The declaration of an energy emergency shall, for the purposes of this Act, terminate one year after the date of its proclamation, unless it shall have been terminated earlier by the President. The President may extend the declaration of an energy emergency for additional periods not exceeding one year. Prior to any such extension, the President shall provide notice to the Congress of his intention to proclaim such an extension.

SEC. 202. AUTHORITY.—During any energy emergency proclaimed by the President pursuant to this Act, the President may exercise any authority vested in him on date of enactment of this Act by the Defense Production Act of 1950, as amended, the Economic Stabilization Act of 1970, as amended, and the Export Administration Act of 1969, as amended, and the Export Administration Act of 1970, as amended, to accomplish the purposes of this Act notwithstanding any prior expiration of any of those Acts.

SEC. 203. EMERGENCY FUEL DISTRIBUTION ACTIONS.—In addition to the authority conferred by section 202 of this Act, the President is authorized during any energy emergency to establish priorities of use, allocation systems for wholesale purchasers and rationing systems to end users and, notwithstanding any other provision of State or Federal law. In exercising this authority, the President may—

(1) allocate all supplies of fuels among all producers, refiners, gas plant operators, wholesale marketers, jobbers, suppliers, distributors, terminal operators, of any person, firm, or corporation supplying or purchasing, wholesale or retail,

or using any fuel of any derivation, including coal, natural gas, or petroleum of any condition, including crude or refined, or quality, including heating value and chemical content;

(2) require any person, firm, or corporation having in its possession or having contracted for or having the capability to produce any supplies of fuel to distribute or redirect the distribution of such supplies, by such quantity and quality as he may specify, to whatever wholesale or retail purchasers of fuel he may designate on a fair and equitable basis;

(3) order the owner or operator of any fuel-burning installation having the capability, as determined under regulations prescribed by the President and after consultation with the Federal Power Commission with respect to matters under its jurisdiction, to convert or preclude from converting from the use of one fuel to the use of another or alternative fuel and to effectuate such conversion; any installation so converted or precluded from conversion will be permitted to continue to use such fuel for at least one year;

(4) acting through the Administrator of the Environmental Protection Agency, exempt, by order and without the necessity for hearing, any fuel-burning stationary source of air pollutant emissions from any emissions limitation in any regulation promulgated under the Clean Air Act or any State air quality statute or local regulation, which limitation may apply to such source in a manner which restricts the source's ability to use any fuel either allocated to it pursuant to this Act, or approved for use by it in conformity with the purposes of this Act; such exemptions shall be granted for a period not to exceed the duration of the energy emergency or as necessary to comply with section 203(3);

(5) acting through the Administrator of the Environmental Protection Agency, exempt, by order and without the necessity for hearing, any refinery or other installation producing or finishing any fuel and any electrical generating facilities from any discharge limitations or other requirements in any regulations adopted pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), or any State water quality statute, and from any discharge or other limitations in any waste water discharge permit issued by any State or Federal agency pursuant to section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342), or any State water quality statute, whenever he determines that such exemption is necessary to assure adequate production of fuels or energy or to effectuate the purposes of this Act; such exemptions shall be granted for a period not to exceed the duration of the energy emergency or as necessary to comply with section 203(c);

(6) enter into appropriate understandings, arrangements, or agreements with concerned domestic interests, foreign states or foreign nationals, or international organizations, to adjust and allocate imports of fossil fuels, or take such other action, and for such time, as he deems necessary, with respect to trade in fossil fuels, in order to achieve the purposes of this Act.

SEC. 204. EMERGENCY ACTIONS TO REDUCE ENERGY CONSUMPTION.—

(1) During an energy emergency, the President is authorized to impose emergency restrictions on public or private activities which involve or result in the use of fuel or energy resources which may include, but are not limited to: transportation control plans; restrictions against the use of fuel or energy for decorative lighting, outdoor advertising, recreational activities or other nonessential uses of energy; limitations on operating hours of commercial establishments and public services, such as schools; temperature restrictions in office and public buildings, including wholesale and retail business establishments, and other structures; and a requirement that the States adopt restrictions on speed limits.

(2) The President may initiate and carry out voluntary energy conservation programs such as public education programs and voluntary reductions in energy use.

(3) To encourage the use of funds authorized by the Federal-Aid Highway Act of 1973 for mass transit capital improvements, the Federal matching share ceiling shall be increased to an amount not to exceed 80 per centum on nonhighway public mass transit projects involving the construction of fixed rail facilities or the purchase of passenger equipment including rolling stock for any mode of mass transit, or both, when such projects are funded pursuant to section 142 of title 23, United States Code, and to further insure the equitable use of such funds, section 164(a) and section 165(b) of the Federal-Aid Highway Act of 1973 are hereby repealed.

(4) Energy control fees: In order to deter consumption of energy resources or encourage the use of alternate fuels, the President may impose fees on energy

consumption, at either the wholesale or retail level, at rates not to exceed—per centum of a representative market value of the item involved.

SEC. 205. EMERGENCY ACTIONS TO INCREASE ENERGY SUPPLIES.—During an emergency the President is authorized to—

(1)(a) Require production of the developed oil and gas resources from any national petroleum reserves, including the naval petroleum reserves, at the maximum rate which could be sustained without detriment to the ultimate recovery of oil and gas under sound engineering and economic principles. Such production is attributable to, and shall meet the needs of production for "national defense purposes", as used in section 7422, title 10, United States Code, as amended, and related sections. Production shall be required under this section only if the energy emergency requires such production to satisfy national security requirements, as determined by the President.

(b) Require expeditious exploration and further development of these reserves to determine the amount of oil and gas reserves located thereon; and

(2) Regulate the conservation and production of crude oil and natural gas. Those regulations shall take precedence over State regulations or crude oil and natural gas which are inconsistent with the regulations of the President.

SEC. 206. RELATION TO ENVIRONMENTAL REQUIREMENTS.—(1) No action taken under this Act shall, for a period of one year after the initiation of such action, be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). However, prior to taking any action if practicable or in any event within sixty days after taking or initiating any action that has potentially significant impact on the environment, an environmental evaluation, with analysis equivalent to that required under section 102(2)(c) of the National Environmental Policy Act to the extent practicable within the time constraints, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public: *Provided, however*, That such an environmental evaluation shall not be required where the action in question has been preceded by preparation and issuance of an environmental impact statement under section 102(2)(c) of the National Environmental Policy Act. In any such action is to be continued beyond one year from the date of its initiation, the requirements of the National Environmental Policy Act shall apply in full to any such action to which they would otherwise apply.

TITLE III—RESPONSIBILITIES OF FEDERAL REGULATORY AGENCIES

SEC. 301. It is the sense of Congress that the public interest requires that governmental actions relating to energy control and transportation policies be coordinated with a comprehensive national energy policy that will insure the development and conservation of existing energy resources to meet the energy needs of the Nation in the future. Consistent with their existing statutory responsibilities, executive agencies as defined in section 105 of title 5, United States Code, shall take into account the effect of their proposed actions on the development and conservation of foreign and domestic energy resources of the United States, and shall take such emergency action as may be necessary to develop and conserve energy during an energy emergency declared by the President.

SEC. 302. During an energy emergency the designated regulatory agencies shall have the following emergency authorities:

(1) The Federal Power Commission may, without notice or hearing, suspend for the duration of such emergency, the applicability of sections 4 and 7 of the Natural Gas Act, as amended, to sales to pipelines which sales would, but for such suspension, otherwise be subject to the provisions of such sections. In order to protect the interests of consumers, the Federal Power Commission is authorized, for the duration of the energy emergency, to monitor the wellhead prices of such natural gas sales under contracts subject to these provisions, and, if necessary establish ceilings as to future rates or charges for such sales. In determining whether to establish such ceilings and in setting their level, that Commission shall take the following factors into account:

(A) the current and projected price of other fuels at the point of utilization, adjusted to reflect a comparable heating value;

(B) the premium nature of natural gas and its environmental superiority over many other fuels;

(C) current and projected prices for the importation of liquefied natural gas and the manufacture of synthetic gaseous fuels; and

(D) the adequacy of these prices to provide necessary incentive for exploration and production of domestic reserves of natural gas and the efficient end-use of such supplies.

(2) In any proceeding under the Atomic Energy Act of 1954, as amended, for which a hearing is required to grant or amend any operating license for a nuclear power reactor, the Commission may issue a temporary operating license under the authority of this Act in advance of the conduct of such hearing: *Provided, however,* That in all other respects the requirements of that Act including, but not limited to, matters of public health and safety, shall be met. No such temporary operating license may be issued for a period in excess of eighteen months.

(3) The Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission shall have, for the duration of any national emergency, in addition to their existing powers the authority to review and adjust a carrier's operating authority in order to conserve fuel. This authority includes but is not limited to adjusting the level of operations, altering points served, shortening distance traveled, and reviewing or adjusting rate schedules accordingly. Actions taken pursuant to this paragraph may be taken, notwithstanding any other provision of law, after summary hearings under procedures prescribed by the regulatory agency but any person adversely affected by an action shall be entitled to a full hearing, as prescribed by law, if petition is filed with the agency within ——— days. Consistent with the purposes of this Act, the Interstate Commerce Commission may enlarge, modify, or remove the various categories of exempt carriage under the Interstate Commerce Act.

(4) All agencies under subsection 302 of this title shall report to the Congress within ninety days of the proclamation of an energy emergency by the President the actions taken by them pursuant to this title. They shall submit additional reports every ninety days thereafter for the duration of the emergency.

TITLE IV—GENERAL PROVISIONS

SEC. 401. The President is authorized to delegate the responsibility vested in him by this Act (other than the authority to proclaim energy emergencies) to any officer or agency of the Federal Government or any State or local government.

SEC 402. PENALTIES.—Any person who—

(a) Willfully violates any order or regulation issued pursuant to this Act shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine not to exceed $———— for each violation.

(b) Violates any order or regulation issued pursuant to this Act shall be subject to civil penalty of not more than $———— for each day he is in violation of this Act.

SEC. 403. INJUNCTIVE RELIEF.—The United States district courts for the districts in which a violation of this Act or regulations issued pursuant thereto occur, or are about to occur, shall have jurisdiction to issue a temporary restraining order, preliminary or permanent injunction to prevent such violation. Such injunction may be issued upon application of the Attorney General in compliance with the Federal Rules of Civil Procedure.

SEC. 404. JURISDICTION OF STATE COURTS.—Violations of State orders or regulations issued pursuant to the requirements of this Act shall be punishable upon conviction in appropriate courts of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or territories. Such courts shall have authority to impose civil penalties or grant injunctive or other relief, consistent with the jurisdiction, with respect to actions which are taken or threatened to be taken in violation of State orders or regulations issued pursuant to the requirements of this Act.

SEC. 405. AUTHORIZATIONS.—There are hereby authorized to be appropriated such funds as are necessary to carry out the provisions of this Act, and during an energy emergency, such funds may be expended without regard to fiscal year limitations.

SEC. 406. RELATION TO OTHER LEGISLATION.—Except as expressly provided in this Act, nothing in this Act shall be deemed to limit or restrict any authority conferred by any other Act.

SEC. 407. ADMINISTRATIVE PROVISIONS.—Sections 205, 206, 207, 211(a), 212(a), 212(e), 212(f), 212(g), and 213 of the Economic Stabilization Act of 1970 (as in effect on the date of enactment of this Act), shall apply to the administration of any regulations promulgated under this Act, and to any action taken by the

President (or his delegate) under this Act, as if such regulation had been promulgated, such order had been issued, or such action had been taken under the Economic Stabilization Act of 1970; except that the expiration of authority to issue and enforce orders and regulations under section 218 of such Act shall not affect any authority to amend and enforce the regulation or to issue and enforce any order under this Act.

SEC. 408. This Act expires on June 31, 19—.

Mr. JACKSON. Mr. President, I yield myself 1 minute in which to take the opportunity to again extend my deep appreciation to the Senator from Maine for the hours, days, weeks, and months he has spent on this bill. He was a mainstay in our efforts throughout the inception of the legislation. I am deeply grateful for his excellent statement. I think that he has stated the case very well.

I also, Mr. President, express my appreciation to the distinguished chairman of the committee, the Senator from West Virginia (Mr. Randolph), for his ongoing contributions since the inception of the pending bill that is now before the Senate.

Mr. BUCKLEY. Mr. President, 3 weeks ago I spoke on this floor against the adoption of the Energy Emergency Act because of its extremely adverse impact on the consumers of the country. I pointed out that our consumers are having their natural gas supply interrupted, and that they are forced to line up in the longest automobile lines in the country because we are particularly subject to the Arab embargo.

I pointed out that the oil rollback on prices would, at best, save New York 2.5 cents per gallon and remove those incentives required in order to enable us to work our way out of the shortages.

I also pointed out that we had the unanimous testimony of five economists, ignored by the conference committee, who stated that it would be irresponsible to roll back prices unless we wanted to place ourselves in perpetual bondage to the Arab states.

I had hoped that some of our arguments would be reported in the press so that the public might be able to understand better some of the issues involved. Unfortunately, in the next day's New York Times, my comments and the comments of several other Senators were dismissed lightly. I know that the New York Times is never wrong. And to my astonishment, I find that New York is an oil-producing State.

Let me tell the Senate what I have found. New York State has 5,300 wells that in the aggregate are producing 2,700 barrels a day, or an average of half a barrel a day for each well. We are producing about 1 million cubic feet of gas a day.

Then, out of curiosity I decided to find out what happened to oil production and exploration in New York State. I checked in Albany. I found that the price of gas in New York State has risen from 40 cents a thousand cubic-feet to 45 cents. I found also that in September of last year new oil was deregulated prior to May 1973, less than one rig was working per month in New York State. In October 1973, the figure rose to 1.8 rigs. In November it was 5.3 rigs. In February of this year, it was 5.3 rigs.

In New York we have seen an expansion amounting to 400 percent. Reservoirs that had been abandoned two and three decades ago are now being brought back into production and are being used simply because the economics of the situation have been changed.

I submit that if this is the experience of New York State, it is bound to be the experience in the rest of the country. If the price incentive is causing people to risk large sums of money to look for deeper hori-

zons. to bring every last drop of oil out of reservoirs that have long since been abandoned, the interests of consumers of the country are being served.

Mr. President, I will vote to sustain the President's veto.

Mr. President, the farmers of America know about economics, and they want assured supplies of oil. That is why the American Farm Bureau Federation urged the President to veto this legislation. I ask unanimous consent, Mr. President, to print in the Record at this point the statement of the American Farm Bureau Federation regarding the Energy Emergency Act.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION REGARDING THE ENERGY EMERGENCY ACT, MARCH 6, 1974

Based on policy Farm Bureau consistently has opposed price controls and rollbacks as a matter of principle. Meeting this week in Chicago, the Board of Directors of the American Farm Bureau Federation affirmed this position and urged the President to veto the Energy Emergency Act, particularly because it contains a provision which would roll back crude oil prices and thus aggravate current shortages. The Board called upon the Congress to sustain the Presidential veto.

WILLIAM J. KUHFUSS,
President.

Mr. MCCLURE. Mr. President, I rise in opposition to the effort to override the President's veto, and I urge Members of the Senate to vote to sustain the President's veto.

Mr. President, we have heard a lot on the floor of the Senate about this measure. We have heard it said that this measure will protect the consumers and get the prices down. As a matter of fact, for more than one reason if we adopt this measure, the price of petroleum products to the consumers of the United States will go up and not down, because it will increase our dependency upon imported products which are highly priced, more so than the domestically produced products that now go into the market.

It is also said that this will create, by some magic alchemy, an independence within our own country. I say this measure will create a greater dependence on imported oil, for the immediate future and for the longer range future.

It has been said that this measure is somehow anti-big business, anti-major oil company. Mr. President, that is an anomaly, because those who speak in favor of this measure say they are in favor of reduced profits to big oil companies, but quietly above the best interests of the big oil companies because their major profits are derived from imports and not domestic production. So the big oil companies like this measure; it serves their interests and increases their profits. The little independent oil companies of this country are opposed to this measure.

Mr. GRAVEL. Mr. President, will the Senator let me underscore that? Will not the Senator agree that it will result in driving American capital abroad?

Mr. MCCLURE. The Senator from Alaska is absolutely correct. It has been said that this measure will save the consumer 5 cents a gallon at the gasoline pump. But I will say that if the price goes back to $5.25 a barrel on old oil and $7.09 on new oil, the customer will save only seven-tenths of 1 cent a gallon, and if the price of all of it were

rolled back to $5.25, he would save 1 1/10 cents a gallon at the pump, and not the larger amounts claimed by the proponents of this measure.

If we are concerned about profits in the oil industry, there is a much better way of dealing with the problem than by this clumsy measure, and that is to deal with profits directly. I have submitted a proposal which would accomplish that, a measure which would increase the supply and reduce profits, rather than result in a scarcity.

Mr. GRAVEL. Mr. President, I just want to underscore what my colleague from Idaho has said very briefly: that this measure will cause inflation, not reduce inflation. It will drive capital abroad, which will create a scarcity here. If we buy more abroad, we will give more control to foreigners, who have essentially caused the inflation we have experienced in the past year. I cannot think of anything more nonsensical, or more inimical to our domestic interests.

One cannot, by edict, turn back the clock. I tried to make that point with my colleague from Washington with respect to real estate values and rentals. But whether it is food or whether it is oil, the principle is the same. For some reason, we think we are gong to be able to do it with oil, but I say it would mean disaster to the most fundamental parts of our society.

Mr. HANSEN. Mr. President, I do not think anything new can be added to the debate. All the issues have been explored in great detail. If I can be helpful at all, the only thing I can do is summarize what we have been talking about.

It ought to be evident to all Americans now that despite our best intentions, we cannot repeal the law of supply and demand. That is manifest from what is happening in Europe. There are no gas lines over there. They have no energy crunch, for obvious reasons. If we want more oil, and I am sure most Americans do, because our economy is geared to energy, and energy comes almost 80 percent from oil and gas, we have got to have oil and gas. The question then arises, are we going to get it from other parts of the world, from Arab nations, from the Middle East, or do we want to get more of it here? Events in the Middle East have underscored the fact that if we want to have the latitude that Americans demand, and that indeed in the interests of world peace we must have, then I think it is important that we have a greater degree of self-sufficiency now, in being able to supply oil and gas domestically, than we have had in the past.

The issue is as simple as that. This act will not produce a single additional barrel of domestic oil.

The price rollback can result only in continued reliance on those who control most of the world's oil at their own price.

The only solution to a shortage is more supply.

The petroleum industry has already responded to more realistic crude oil prices and higher profits. The economics department of McGraw-Hill publications reports that the petroleum industry plans to invest $7.68 billion in 1974 which is 42 percent higher than last year and double the increase planned last October.

So a vote to override the President's veto would reverse the trend toward the only real solution of our energy problem—development of domestic self-sufficiency.

We can do that very simply by doing what the Senator from Alaska has suggested, and that is rejecting this illstarred, poorly conceived,

economically foolish measure that would have become law had not the President of the United States vetoed it.

Let us do that. Let us reject it, because not too long ago we passed another emergency bill that has now come back to haunt us. And that was the Emergency Petroleum Allocation Act which now must be amended because it was pushed through as a consumer protection bill when in practice it has caused nothing but trouble and longer lines at the gas pump.

Mr. JACKSON. Mr. President, I think it is important for the Members of the Senate to keep in mind that there is something more to the legislation that is pending before this body than the subject of rollback. All I want to say on the subject of rollback of the price [Sec. 110] is that we are not talking about a free market. We are talking about a cartel market.

Mr. President, we have asked the Arab countries to roll back their prices, we have asked Canada to roll back its prices, and now, if this override fails, we are not going to roll back our prices, but instead we are talking about fixing our prices—and that is what it amounts to—at the Arab price level.

I point out that the bill also provides for the coverage of those who are unemployed by reason of the energy crisis. [Sec. 116.] Let me point out just this one fact: over the ticker, a few minutes ago, the Bureau of Labor Statistics came out with the latest unemployment statistics. They are, as of today, 292,000 people out of work directly as a result of the energy crisis, bringing the total to 2,643,000. This is up 40,000 over last week.

Mr. President, the President dismisses this situation in a rather cynical manner. He dismisses in a cynical manner an opportunity to help the small businessman to obtain long-term loans, and homeowners' long-term loans in order to provide for a more effective means of dealing with energy problems through appropriate insulation programs. [Sec. 130.]

He says nothing about a requirement in the bill here which is crucial: that the oil companies make a full disclosure of their assets and their resources. [Sec. 124.]

We have provisions in here for safeguards on antitrust. We have grants to the States to implement this program. We have provision for the protection of franchise dealers, both branded and nonbranded. We have a provision for control of exports, and we have a provision for conservation and rationing.

This is a comprehensive bill, and I hope the Senate will vote to override the veto measure of the President of the United States.

Mr. TOWER. Mr. President, the issue of major oil company profits is probably about the phoniest issue we could bring up in connection with the rollback on the price of domestic crude. Approximately 75 to 80 percent of the domestic exploration in this country is undertaken by independent operators, not by the major oil companies. The major oil companies are the customers of the independents. When you roll back the price of crude, you do not change the profit picture of the major oil companies; what you do is discourage the independents. You discourage marginal production in this country, which amounts to about 12.5 percent of the production in this country. If we fail to sustain the veto of the President of the United States, we will

wipe out about 12.5 percent of the oil and gas production in this country.

The Senator talks about unemployment. Mr. President, we will have a lot more unemployment if this undesirable piece of legislation is sustained by this vote and subsequently sustained by the House of Representatives. Make no mistake about that.

Furthermore, we are going to deny ourselves the prospect of drilling for an additional 275 million barrels of oil in this country this year, if this law is allowed to stand.

Further, yes, there is something else in the bill and that is **section 108** which prescribes the regulation of maximum efficient production—MERP, as it is called—and that will go into the hands of the Federal Government and out of the hands of competent State authorities and can destroy future sources of oil for this country for years to come.

Mr. BELLMON. Mr. President, the Energy Emergency Act with the crude oil price rollback provision **[Sec. 110]** is a bad piece of legislation and the President did the right thing by vetoing it. I feel strongly the veto should be sustained for these reasons:

It would further weaken the domestic energy industry at a time when drilling activity is beginning to pick up.

It would create a greater dependence on imports from other countries at higher prices.

It would not relieve the shortage of fuel, because it would not produce a single extra barrel of oil.

It would not produce any significant effect on propane prices, because about two-thirds of all propane is produced from natural gas.

It would not reduce the price of gasoline more than about 1 cent per gallon, and these savings would soon be wiped out by high-cost imported fuel.

It would be another step toward Government control of private industry.

It would allow the Federal Government to take over conservation functions now carried out by State regulatory agencies.

It would probably be declared unconstitutional, because it would be the first time in history that Congress set a price on one commodity for one industry.

This rollback bill **[Sec. 110]** would be a setback for every consumer in the United States.

Mr. STEVENSON. Would the distinguished Senator from Washington yield briefly for some questions on the rollback section of the bill, **section 110**?

Last weekend I had the opportunity to meet with several independent producers in Illinois who expressed some concern over this section and some confusion over what would happen if the provision were enacted. They thought that as soon as the bill was enacted the price of all oil—even that of new oil—would immediately be rolled back to $5.25 per barrel. Some of these producers thought they might be able to live with a price of $7.09, but not a price of $5.25 for new oil, but they believed that the price would immediately roll back to $5.25 and that there would probably be a delay of several months before various hurdles could be passed and the $7.09 price instituted.

Senator, as a conferee I understood that what this legislation actually envisions is a 30-day freeze after the bill is enacted, in other

words, a 30-day period within which the President could act to free various classes of oil from the $5.25 per barrel level up to the $7.09 per barrel level. During that 30-day period, however, prices would remain what they were on the day of enactment, or about $5.25 for old oil and over $10 for the so-called new oil. It would only be after the 30-day period, and unless the President had not acted to raise prices beyond the $5.25 level for certain classes of oil, that the price of all oil would be rolled back to $5.25 per barrel.

Am I correct in my understanding of the provisions of **section 110**?

Mr. JACKSON. The Senator from Illinois is essentially correct. The only caveat I would add is that if the President chose to act before the expiration of the 30-day period he could set prices for any class of oil at a price over $5.25 and up to $7.09, but not above that price. But essentially we have a 30-day freeze on present prices, and then a rollback, a rollback which would be to $5.25 for all oil—and $5.25 is not even a rollback for old oil—unless the President acted within that time frame to exempt certain classes of oil from the $5.25 price, in which case he could raise those classes up to a maximum of $7.09. The authority to raise the price up to $7.09 is with the President.

Mr. STEVENSON. Thank you. Senator Jackson, it is also my understanding that the procedural provisions of **section 110** would not cause a serious delay. There would be a 10-day period required for comments on any action the President proposes to take, but even that could be waived with the hearing to follow after a price above $5.25 is instituted. And the bill rules out any temporary restraining orders or preliminary injunctions by the courts. The courts could only act by issuing a final order ruling the President's action unlawful because it is based on a lack of substantial evidence. Is my understanding on these points correct?

Mr. JACKSON. The Senator is correct. The President can act as quickly as he deems fit. The procedural mechanisms which are placed in the act are for the protection of the public—the independent producers as well as the consumer—from arbitrary actions by the administration. The independent producer can challenge the President's prices as being too low and, therefore, inequitable if the price is below $7.09.

Mr. STEVENSON. But the proceedings need not drag on months or even weeks?

Mr. JACKSON. How long any proceedings "drag on" depends on the administration. The only period the bill provides is a 10-day period for comments, and even that period can be waived. And once the price is in effect it stays in effect until a court finally determines that it is inequitable.

Mr. STEVENSON. And am I correct in stating that the $7.09 price could apply to all new oil and to oil from stripper wells?

Mr. JACKSON. The Senator is correct.

Mr. STEVENSON. And since the administration was seeking a higher level than $7.09, is it not probable that the administration would move quickly to permit $7.09 for all new oil and oil from stripper wells?

Mr. JACKSON. That would be my expectation.

Mr. STEVENSON. I thank the Senator for that clarification of this legislation. It should be reassuring to independent producers throughout the country, whom we want to aid, as well as to those in Illinois.

Mr. WILLIAMS. Mr. President, I am very disturbed about President Nixon's decision to veto the Emergency Energy Act passed by Congress.

Mr. BAYH. Mr. President, I shall vote to override the President's unwise and illogical veto of the Energy Emergency Act and urge strongly that my colleagues join me in passing this crucial legislation despite the President's shortsighted action.

This is President Nixon's 42d veto, and it is as unjustified as any of the preceeding 41. Once again, the President has vetoed legislation passed overwhelmingly by both the Senate and House of Representatives. Once again we are faced with the necessity of legislating, not by a majority but by two-thirds of the Senate and House.

The veto of the Energy Emergency Act is ironic, since the President and spokesmen for his administration have repeatedly chided the Congress for not moving fast enough on energy legislation. The fact is this important bill would have been enacted before the Christmas recess were it not for stalling tactics supported by the administration, and in January were it not for an initial recommittal of the conference report accomplished with the full support of the administration.

The President offers three reasons for his veto. None are well-taken and, in fact all fly in the face of the best interests of the American people.

PRICE ROLLBACK

The President opposes **section 110** of the bill which would lower crude oil and refined petroleum product prices. He argues that the rollback in prices would reduce the supply of available gasoline by discouraging oil exploration.

This is wrong. The bill permits the President to raise the price of so-called new oil, that is oil produced in excess of early 1973 production, to as much as $7.09 a barrel. This is 35 percent above the basic price of $5.25 a barrel. What the President fails to acknowledge, as he adopts the same arguments made by the oil industry when it lobbied against passage of the bill, is that as late as last fall the oil industry agreed that a price of about $7 a barrel was enough to justify new drilling and production.

We are faced, Mr. President, with a remarkable situation in which the oil industry chooses to raise the minimum acceptable price for new oil production to new and higher levels after every price increase is granted. Such unjustified price increases smack of profiteering and place a totally unreasonable burden on American consumers already reeling under inflation which came close to 9 percent last year.

To gain a better perspective on the $7.09 a barrel price to be allowed on new oil, this is fully twice the average domestic price of crude oil just 1 year ago, and $1.84 a barrel more than the basic price of domestic oil.

Rather than support the price rollback, which would provide desperately needed relief for American consumers, the President offers what he insists on calling a windfall profits tax. But no matter what the President calls his proposal, it really is an excise tax, the burden of which will be carried by consumers as the major oil companies—whose profits were up 50 percent last year—continue to rake in record profits.

Mr. President, the rollback in crude oil and refined petroleum product prices is one of the very important provisions of Energy Emer-

gency Act. It is something that has the understandable support of the American people. Rather than serving to justify a Presidential veto, it provides good cause for us to override that veto.

UNEMPLOYMENT COMPENSATION

The second reason cited by the President for his veto is **section 116**, the provision for expanded and extended unemployment compensation for workers who lose their jobs due to the energy crisis. Since **section 116** follows very closely an amendment I suggested to the distinguished Senator from Washington (Mr. JACKSON), I obviously have a deep concern about this provision.

The President's abrupt dismissal of this section as "arbitrary" and "vague" shows remarkable insensitivity to the tens of thousands of American workers who have already lost their jobs due to the energy crisis. These workers, and their families, are not buoyed by the overly optimistic fundamentally inaccurate statements by high administration spokesmen that the energy crisis will not play a major role in expanding unemployment.

In my own State of Indiana, the energy crisis has already created grave unemployment, as high as 10 percent in Elkhart. This unemployment is not always directly attributable to a specific governmental response to the energy crisis. Sometimes jobs are lost indirectly due to fuel prices and fuel allocations. Or, as is the case in Elkhart where the recreational vehicle industry has experienced major shutdowns, the unemployment results from consumer reluctance to buy a new recreational vehicle, automobile, or other product, because of legitimate uncertainty about the availability of fuel in coming months.

This is why **section 116** takes into account all unemployment resulting from the energy crisis. The President's objection to this provision ignores reality as clearly as do his other statements that the energy crisis is over and we will not have a recession. The President would like to wish away our energy crisis and coming recession, but all his wishing will not put food on the table of families, in Indiana and across the country, in which the breadwinners have been thrown out of work.

I have no patience for the callous opposition of the President to the improved unemployment compensation provisions of the Energy Emergency Act. This is a most basic need, for which we can wait no longer, and further argues for a vote to override this veto.

ENERGY CONSERVATION LOANS

The third reason given by the President for his veto is the section **[Sec. 130]** which authorizes low interest loans to homeowners and small businessmen to improve insulation. This proposal is designed to meet our energy problem in one of the quickest and most effective ways available.

Even as we explore ways to increase our energy supply, we should by taking the necessary steps to reduce energy demand, and improved insulation will have a major effect in cutting demand.

The President talks about conserving energy, yet he is unwilling to even lend—not give—American homeowners and small businessmen the money needed to conserve significant amounts of energy. All his

lip service will not buy a single storm window, and I disagree fully with his argument against the low-interest loan provision of the act.

Mr. President, having addressed myself to the three specific issues raised by the President in his veto message, I would like to summarize other important and desirable provisions of the Energy Emergency Act. All of these provisions, which follow, have been carefully considered in the Senate and House, and by the conferees in several different sessions, and deserve passage despite the President's veto:

Authority to limit the export of coal, petroleum products and petrochemical feedstocks is given to the Administrator of the new Federal Energy Emergency Administration. **[Sec. 115.]** Also, the Secretary of Commerce would be required to use his authority to limit exports of these vital products if the Administrator deems it necessary to meet the energy emergency. For more than 3 months I have been trying to get the Secretary of Commerce to use his existing authority to limit petrochemical exports. Domestic industry, especially small businesses, has been hurt severely by the shortage of petrochemical feedstocks and the inaction of the Secretary is deplorable. At last, this bill provides a solution to that inaction.

Recognizing that there are limits to which we can balance energy supply and demand by increasing supplies in the short term, the bill gives the administration needed authority to limit energy demand through mandatory conservation methods. Such conservation may be our best hope for avoiding economic disaster due to the energy crisis. **[Sec. 105.]**

In a further effort to avoid energy waste, the bill instructs the regulatory agencies to revise their regulations to permit fuel savings in interstate commerce. **[Sec. 113.]**

Since end-use gasoline rationing may become necessary, the bill creates the necessary authority for rationing. **[Sec. 104.]**

As part of the overall program of energy conservation the bill provides Federal assistance to States and localities in developing carpool program. **[Sec. 117.]**

Since the major, integrated oil companies have used the fuel shortage as a tool against gasoline service station operators who do not follow the company line, the bill contains needed protections for the franchise rights of these small businessmen. **[Sec. 111.]**

The bill has tough, effective antitrust rules to make certain the oil companies do not act improperly in concert in responding to the energy crisis. **[Sec. 114.]**

Mr. President, I know the President's veto of the Energy Emergency Act has brought glee to the boardrooms of the major, international companies. But it has brought sorrow to American consumers. I hope sincerely that the Congress will override this veto, here in the Senate and in the House of Representatives, and in that way show that we are far more concerned with the well-being of the average American family than with the earnings of the multinational oil giants.

Mr. HELMS. Mr. President, President Nixon has, as Senators are aware, vetoed the so-called "Emergency Energy Act." I voted

against this legislation when final passage was considered by the Senate, and I will vote to sustain a veto. This act would create yet another Federal bureaucracy to manufacture "redtape" and harass the American people—those it presumably would exist to aid, all at a cost borne by the taxpayer and consumer.

Everyone is properly concerned about the energy crisis with its shortages of gasoline, fuel oil, and gas. Many portions of the country have felt the heavy burden of long lines at service stations and an inadequate supply of fuel generally. I am convinced that my State has borne the brunt of this situation as heavily as any.

Our people are justly concerned. Many businesses have been adversely affected. Everyone's daily life has been pervaded by the ever present necessity of searching for small quantities of fuel to meet essential and immediate needs.

Nonetheless, the American people remain unconvinced that our fuel situation is so extreme as to merit the extraordinary remedies that have been mentioned from time to time. According to a recent Gallup poll, 53 percent of Americans oppose gasoline rationing: a clear majority. Reasons advanced in opposition to the establishment of such a rationing program are: first the involvement of bureaucratic "redtape," which it is feared would render the program more of a burden than an advantage; two, the inability of the Government to accurately forecast the fuel needs of the various segments of our society so as to structure the program in an equitable manner; and three, the fear that it would encourage "black marketeering."

Furthermore, Mr. William Simon, Administrator of the Federal Energy Office, recently acknowledged that he basically just does not think that rationing would work.

It is evident that the American people do not want gasoline rationing. It is equally evident that the American people believe the Government to be incapable of establishing a fair and workable rationing program. We are compelled to the conclusion that our citizenry would prefer to trust the free enterprise system to provide for their needs. In this conclusion, I entirely agree.

The American people recall all too well the dismal failures of other governmental attempt to improve upon free enterprise. We all remember that we tried price controls on meat, and the result was an almost immediate shortage of meat. Some have advocated a price rollback. Many, however, see this purported panacea for the idle dream that it is. Only through production and competition in the marketplace can we hope to enjoy a more abundant supply of the goods we need and—in the long run—more equitable prices for the goods we buy. Price controls create negative incentives for production. We cannot afford further interference with the business sector in a time of acute shortage.

I cannot support a gasoline rationing program, and I urge the removal of all price controls from the economy so that the market can return to a normal supply-and-demand situation.

I certainly share the general concern regarding the current fuel shortage, but we must not allow this transitory hardship to bring about a further erosion of our free enterprise system and our traditional American economic structure.

Mr. CRANSTON. Mr. President, I rise to express my deep regret that President Nixon has vetoed the Energy Emergency Act (S. 2589) and to urge my colleagues to vote today to override this unfortunate veto.

In his veto message, President Nixon stated that **section 110** of S. 2589, which would roll back the price of domestically produced crude oil would "set domestic crude oil prices at such low levels that the oil industry would be unable to sustain its present production of petroleum products, including gasoline."

Mr. President, this statement is difficult to believe. The rollback provision would simply require that all crude oil produced in the United States—with the exception of stripper wells—would be subject to the current controlled price level of $5.25 a barrel. Currently, 75 percent of all domestic crude oil is subject to this price ceiling. The rollback would affect less than 25 percent of the domestic crude oil—that which is now averaging the world price of $10 a barrel. But to be sure that there is ample incentive to maximize production from current wells and to explore for new oil, the President would have the authority under the rollback provision to raise the price of "new" oil to $7.09 a barrel if he found that such price increases were necessary in order to stimulate new production.

This veto is based to a large extent on the feeble and erroneous argument that we must have uncontrolled, inflation-feeding fuel prices in order to stimulate new production. Even the oil industry admits that $10 a barrel oil is not economically justifiable. In December 1973, the National Petroleum Council said:

"For maximum attainable self-sufficiency by 1980 a price of $4.05 would give a 10 percent rate of return, while a price of $5.74 would give a 20 percent return."

We should not forget, too, that in the past 12 months, crude oil prices have doubled. In January of 1973, the average price per barrel was $3.40. In January of 1974, that average had jumped to $6.75. But even with this supposed incentive, crude oil production during the same period increased by a mere 34,000 barrels—from 10,859,000 barrels a day to 10,893,000 barrels a day.

The facts simply do not support President Nixon's contention that we must allow the price of crude oil to skyrocket in order to encourage the oil companies to produce more oil.

But the President has vetoed far more than a rollback of fuel prices.

By once again acting to protect the interests of the oil companies, President Nixon has sacrificed the interests of the American people.

He has vetoed unemployment assistance benefits of $500 million that would be available as grants-in-aid to the States to provide at least 6 months additional unemployment compensation to individuals left jobless as a result of energy shortages. **[Sec. 116.]**

He has vetoed new legal rights and judicial remedies for service station owners to protect them from arbitrary and unreasonable actions by large oil companies. **[Sec. 111.]**

He has vetoed a provision which would have, for the first time, required the mandatory disclosure by the oil companies of reliable data and information on reserves, production levels, refinery runs, stock

levels, imports, prices, and other information essential to understanding the scope of the energy crisis. **[Sec. 124.]**

He has vetoed stringent antitrust safeguards designed to insure that the agreements among the oil companies to deal with shortages do not result in permanent violations of the antitrust laws. **[Sec. 114.]**

He has vetoed authority for a wide range of actions designed to conserve scarce energy resources, particularly authority to ration gasoline and to require regular operating hours for gas stations. **[Secs. 104 and 105.]**

And he has vetoed authority for the Department of Housing and Urban Development and the Small Business Administration to provide low-interest loan assistance to homeowners and small businesses to finance insulation, storm windows, and improved heating units. **[Sec. 130.]** I am particularly disappointed that this has been vetoed, because in his message, President Nixon claimed:

"The actual energy savings produced by these vast expenditures would not justify such as enormous loan program."

I find this a difficult pill to swallow. In other messages, President Nixon has told the American people that they must conserve energy, that they must turn their thermostats down and turn off lights and make other sacrifices in order to save fuel. His action today amounts to another message that the people must bear the brunt of rising fuel costs, with no hope of assistance in the form of loans from the Federal Government.

And it is incorrect to imply that these conservation measures will have an insignificant impact on our overall energy budget. Currently, the residential sector uses about 20 percent of all the energy consumed, with 70 percent of this amount being consumed by only two household uses—space heating and water heating.

Mr. CRANSTON. The real message of this veto, Mr. President, is that the President of the United States intends to place the primary burden of the energy crisis on the shoulders of the individual consumers. He is saying to the American people that they must swallow rhetoric instead of action and pay higher and higher fuel costs while the oil companies continue to line their pockets with record profits. I urge the Senate to override this veto.

The PRESIDING OFFICER (Mr. William C. Scott). The hour of 5 o'clock having arrived, and all time having expired, the question is, Shall the bill (S. 2589) pass, the objections of the President of the United States to the contrary notwithstanding?

The yeas and nays are mandatory under the Constitution. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. Cannon) is necessarily absent.

I further announce that, if present and voting, the Senator from Nevada (Mr. Cannon) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Connecticut (Mr. Weicker) is absent due to death in the family.

The yeas and nays resulted—yeas 58, nays 40, as follows:

[No. 58 Leg.]

YEAS—58

Allen	Hartke	Muskie
Baker	Haskell	Nelson
Bayh	Hathaway	Nunn
Bible	Hollings	Packwood
Biden	Huddleston	Pastore
Brooke	Hughes	Pell
Burdick	Humphrey	Proxmire
Byrd, Harry F., Jr.	Inouye	Randolph
Byrd, Robert C.	Jackson	Ribicoff
Case	Javits	Schweiker
Chiles	Kennedy	Stafford
Church	Magnuson	Stevens
Clark	Mansfield	Stevenson
Cook	Mathias	Symington
Cranston	McGovern	Talmadge
Eagleton	McIntyre	Tunney
Ervin	Metcalf	Williams
Fulbright	Metzenbaum	Young
Griffin	Mondale	
Hart	Moss	

NAYS—40

Abourezk	Eastland	McClure
Aiken	Fannin	McGee
Bartlett	Fong	Montoya
Beall	Goldwater	Pearson
Bellmon	Gravel	Percy
Bennett	Gurney	Roth
Bentsen	Hansen	Scott, Hugh
Brock	Hatfield	Scott, William L.
Buckley	Helms	Sparkman
Cotton	Hruska	Stennis
Curtis	Johnston	Taft
Dole	Long	Thurmond
Domenici	McClellan	Tower
Dominick		

NOT VOTING—2

Cannon
Weicker

The PRESIDING OFFICER. (Mr. Metzenbaum). Two-thirds of the Senators present and voting not having voted in the affirmative, the bill, on reconsideration, fails of passage.

CHAPTER 7

Second Conference Report and Debates on S. 2589

93D CONGRESS
2d Session
SENATE
REPORT
No. 93-681

ENERGY EMERGENCY ACT

FEBRUARY 6, 1974.—Ordered to be printed
Filed under authority of the order of the Senate of February 6, 1974

Mr. JACKSON, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 2589]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act, including the following table of contents, may be cited as the "Energy Emergency Act".

TABLE OF CONTENTS

TITLE I—ENERGY EMERGENCY AUTHORITIES

SEC. 101. FINDINGS AND PURPOSES.

(a) (1) The Congress hereby determines that—

(A) shortages of crude oil, residual fuel oil, and refined petroleum products caused by insufficient domestic refining capacity, inadequate domestic production, environmental constraints, and the unavailability of imports sufficient to satisfy domestic demand, now exist;

(B) such shortages have created or will create severe economic dislocations and hardships;

(C) such shortages and dislocations jeopardize the normal flow of interstate and foreign commerce and constitute an energy emergency which can be averted or minimized most efficiently and effectively through prompt action by the executive branch of Government;

(D) disruptions in the availability of imported energy supplies, particularly crude oil and petroleum products, pose a serious risk to national security, economic well-being, and health and welfare of the American people;

(E) because of the diversity of conditions, climate, and available fuel mix in different areas of the Nation, a primary governmental responsibility for developing and enforcing energy emergency measures lies with the States and with the local govern-

ments of major metropolitan areas acting in accord with the provisions of this Act; and

(F) the protection and fostering of competition and the prevention of anticompetitive practices and effects are vital during the energy emergency.

(2) On the basis of the determinations specified in subparagraphs (A) through (F) of paragraph (1) of this subsection, the Congress hereby finds that current and imminent fuel shortages have created a nationwide energy emergency.

(b) The purposes of this Act are to call for proposals for energy emergency rationing and conservation measures and to authorize specific temporary emergency actions to be exercised, subject to congressional review and right of approval or disapproval, to assure that the essential needs of the United States for fuels will be met in a manner which, to the fullest extent practicable: (1) is consistent with existing national commitments to protect and improve the environment; (2) minimizes any adverse impact on employment; (3) provides for equitable treatment of all sectors of the economy; (4) maintains vital services necessary to health, safety, and public welfare; and (5) insures against anticompetitive practices and effects and preserves, enhances, and facilitates competition in the development, production, transportation, distribution, and marketing of energy resources.

SEC. 102. DEFINITIONS.

For purposes of this Act:

(1) The term "State" means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

(2) The term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (as defined in the Emergency Petroleum Allocation Act of 1973).

(3) The term "United States" when used in the geographical sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(4) The term "Administrator" means the Administrator of the Federal Energy Emergency Administration.

SEC. 103. FEDERAL ENERGY EMERGENCY ADMINISTRATION.

(a) There is hereby established until May 15, 1975, unless superseded prior to that date by law, a Federal Energy Emergency Administration which shall be temporary and shall be headed by a Federal Energy Emergency Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. Vacancies in the office of Administrator shall be filled in the same manner as the original appointment.

(b) The Administrator shall be compensated at the rate provided for level II of the Executive Schedule. Subject to the Civil Service and Classification provisions of title 5, United States Code, the Administrator may employ such personnel as he deems necessary to carry out his functions.

(c) Effective on the date on which the Administrator first takes office, all functions, powers, and duties of the President under the Emergency Petroleum Allocation Act of 1973 (as amended by this Act), and of any officer, department, agency, or State (or officer there-

of) under such Act (other than functions vested by section 6 of such Act in the Federal Trade Commission, the Attorney General, or the Antitrust Division of the Department of Justice), are transferred to the Administrator. All personnel, property, records, obligations, and commitments used primarily with respect to functions transferred under the preceding sentence shall be transferred to the Administrator.

(d)(1) Whenever the Federal Energy Emergency Administration submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress.

(2) Whenever the Federal Energy Emergency Administration submits any legislative recommendations or testimony or comments on legislation to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress.

(3) The Federal Energy Emergency Administration shall be considered an independent regulatory agency for purposes of chapter 35 of title 44, United States Code, but not for any other purpose.

SEC. 104. END-USE RATIONING.

Section 4 of the Emergency Petroleum Allocation Act of 1973 is amended by adding at the end thereof the following new subsection:

"(h)(1) The President may promulgate a rule which shall be deemed a part of the regulation under subsection (a) and which shall provide, consistent with the objectives of subsection (b), for the establishment of a program for the rationing and ordering of priorities among classes of end-users of crude oil, residual fuel oil, or any refined petroleum product, and for the assignment to end-users of such products of rights, and evidences of such rights, entitling them to obtain such products in precedence to other classes of end-users not similarly entitled.

"(2) The rule under this subsection shall take effect only if the President finds that, without such rule, all other practicable and authorized methods to limit energy demand will not achieve the objectives of subsection (b) of this section and of the Energy Emergency Act.

"(3) The President shall, by order, in furtherance of the rule authorized pursuant to paragraph (1) of this subsection and consistent with the attainment of the objectives in subsection (b) of this section, cause such adjustments in the allocations made pursuant to the regulation under subsection (a) as may be necessary to carry out the purposes of this subsection.

"(4) The President shall provide for procedures by which any end-user of crude oil, residual fuel oil or refined petroleum products for which priorities and entitlements are established under paragraph (1) of this subsection may petition for review and reclassification or modification of any determination made under such paragraph with respect to his rationing priority or entitlement. Such procedures may include procedures with respect to such local boards as may be authorized to carry out functions under this subsection pursuant to section 122 of the Energy Emergency Act.

"(5) No rule or order under this section may impose any tax or user fee, or provide for a credit or deduction in computing any tax."

SEC. 105. ENERGY CONSERVATION PLANS.

(a)(1)(A) Pursuant to the provisions of this section, the Administrator may promulgate, by regulation, one or more energy conserva-

tion plans in accord with this section which shall be designed (together with actions taken and proposed to be taken under other authority of this or other Acts) to result in a reduction of energy consumption to a level which can be supplied by available energy resources. For purposes of this section, the term "energy conservation plan" means a plan for transportation controls (including but not limited to highway speed limits) or such other reasonable restrictions on the public or private use of energy (including limitations on energy consumption of businesses) which are necessary to reduce energy consumption.

(B) No energy conservation plan may impose rationing or any tax or user fee, or provide for a credit or deduction in computing any tax.

(2) An energy conservation plan shall become effective as provided in subsection (b). Such a plan shall apply in each State, except as otherwise provided in an exemption granted pursuant to such plan in cases where a comparable State or local program is in effect, or where the Administrator finds special circumstances exist.

(3) An energy conservation plan may not deal with more than one logically consistent subject matter.

(4) An amendment to an energy conservation plan, if it has significant substantive effect, shall be transmitted to Congress and shall be effective only in accordance with subsection (b). Any amendment which does not have significant substantive effect and any rescission of a plan may be made effective in accordance with section 553 of title 5, United States Code.

(5) Subject to subsection (b)(3), an energy conservation plan shall remain in effect for a period specified in the plan unless earlier rescinded by the Administrator, but shall terminate in any event no later than six months after any such plan first takes effect.

(b)(1) For purposes of this subsection, the term "energy conservation plan" includes an amendment to an energy conservation plan which has significant substantive effect.

(2) The Administrator shall transmit any energy conservation plan (bearing an identification number) to each House of Congress on the date on which it is promulgated.

(3)(A) If an energy conservation plan is transmitted to Congress before March 15, 1974, and provides for an effective date earlier than March 15, 1974, such plan shall take effect on the date provided in the plan; but if either House of the Congress, before the end of the first period of 15 calendar days of continuous session of Congress after the date on which such plan is transmitted to it, passes a resolution stating in substance that such House does not favor such plan, such plan shall cease to be effective on the date of passage of such resolution.

(B)(i) Except as provided in clause (ii), if an energy conservation plan is transmitted to the Congress and provides for an effective date on or after March 15, 1974, and before September 1, 1974, such plan shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which such plan is transmitted to it unless, between the date of transmittal and the end of the 15-day period, either House passes a resolution stating in substance that such House does not favor such plan.

(ii) An energy conservation plan described in clause (i) may be implemented prior to the expiration of the 15 calendar-day period after the date on which such plan is transmitted, if each House of

Congress approves a resolution affirmatively stating in substance that such House does not object to the implementation of such plan.

(C) An energy conservation plan proposed to be made effective on or after September 1, 1974, shall take effect only if approved by Act of Congress.

(4) For the purpose of paragraph (3) of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the 15-day period.

(5) Under provisions contained in an energy conservation plan, a provision of the plan may take effect at a time later than the date on which such plan otherwise takes effect.

(c) (1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(2) For purposes of this subsection, the term 'resolution' means only a resolution of either House of Congress described in subparagraph (A) or (B).

(A) A resolution the matter after the resolving clause of which is as follows: "That the ———— does not object to the implementation of energy conservation plan numbered ———— submitted to the Congress on ————, 19__.", the first blank space therein being filled with the name of the resolving House and the other blank space being appropriately filled; but does not include a resolution which specified more than one energy conservation plan.

(B) A resolution the matter after the resolving clause of which is as follows: "That the ———— does not favor the energy conservation plan numbered ———— transmitted to Congress on ————, 19—.", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one energy conservation plan.

(3) A resolution once introduced with respect to an energy conservation plan shall immediately be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4) (A) If the committee to which a resolution with respect to an energy conservation plan has been referred has not reported it at the end of 5 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such

resolution or to discharge the committee from further consideration of any other resolution with respect to such energy conservation plan which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same energy conservation plan), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same plan.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which the resolution was agreed to or disagreed to; except that it shall be in order to substitute a resolution disapproving a plan for a resolution not to object to such plan, or a resolution not to object to a plan for a resolution disapproving such plan.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to an energy conservation plan, then it shall not be in order to consider in that House any other resolution with respect to the same plan.

(d)(1) In carrying out the provisions of this Act, the Administrator shall, to the greatest extent practicable, evaluate the potential economic impacts of proposed regulatory and other actions including but not limited to the preparation of an analysis of the effect of such actions on—

(A) the fiscal integrity of State and local government;

(B) vital industrial sectors of the economy;

(C) employment, by industrial and trade sector, as well as on a national, regional, State, and local basis;

(D) *the economic vitality of regional, State, and local areas;*
(E) *the availability and price of consumer goods and services;*
(F) *the gross national product;*
(G) *competition in all sectors of industry; and*
(H) *small business.*

(2) *The Administrator shall develop analyses of the economic impact of any energy conservation plan on States or significant sectors thereof, considering the impact on energy resources as fuel and as feedstock for industry.*

(3) *Such analysis shall, whenever possible, be made explicit and, to the extent practicable, other Federal agencies and agencies of State and local governments which have special knowledge and expertise relevant to the impact of proposed regulatory or other actions shall be consulted in making the analyses, and all Federal agencies shall cooperate with the Administrator in preparing such analyses except that the Administrator's actions pursuant to this subsection shall not create any right of review or cause of action except as otherwise exist under other provisions of law.*

(4) *The Administrator, together with the Secretaries of Labor and Commerce, shall monitor the economic impact of any rules, regulations, and orders taken by the Administrator, and shall provide the Congress with separate reports every thirty days on the impact of the energy shortage and such emergency actions on employment and the economy.*

(e) *Any energy conservation plan which the Administrator submits to the Congress pursuant to subsection (b) of this section shall include findings of fact and a specific statement explaining the rationale for each provision contained in such plan.*

SEC. 106. COAL CONVERSION AND ALLOCATION.

(a) *The Administrator shall, to the extent practicable and consistent with the objectives of this Act, by order, after balancing on a plant-by-plant basis the environmental effects of use of coal against the need to fulfill the purposes of this Act, prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this Act, has the capability and necessary plant equipment to burn coal. Any installation to which such an order applies shall be permitted to continue to use coal or coal byproducts as provided in section 119(b) of the Clean Air Act. To the extent coal supplies are limited to less than the aggregate amount of coal supplies which may be necessary to satisfy the requirements of those installations which can be expected to use coal (including installations to which orders may apply under this subsection), the Administrator shall prohibit the use of natural gas and petroleum products for those installations where the use of coal will have the least adverse environmental impact. A prohibition on use of natural gas and petroleum products under this subsection shall be contingent upon the availability of coal, coal transportation facilities, and the maintenance of reliability of service in a given service area. The Administrator shall require that fossil-fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable*

of using coal as a primary energy source instead of or in addition to other fossil fuels. No fossil-fuel-fired electric powerplant may be required under this section to be so designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) if an adequate and reliable supply of coal is not available and is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

(b) The Administrator may by rule prescribe a system for allocation of coal to users thereof in order to attain the objectives specified in this section.

SEC. 107. MATERIALS ALLOCATION.

(a) The Administrator shall, within 30 days after the date of enactment of this Act, propose (in the nature of a proposed rule affording an opportunity for the presentation of views) and publish (and may from time to time amend) a contingency plan for the allocation of supplies of materials and equipment necessary for exploration, production, refining, and required transportation of energy supplies and for the construction and maintenance of energy facilities. At such time as he finds that it is necessary to put all or part of such plan into effect, he shall transmit such plan or portion thereof to each House of Congress and such plan or portion thereof shall take effect in the same manner as an energy conservation plan prescribed under section 105 and to which section 105(b)(3)(A) applies (except that such plan or portions thereof may be submitted at any time after the date of enactment of this Act and before May 15, 1975).

(b) Section 4(b)(1)(G) of the Emergency Petroleum Allocation Act of 1973 is amended to read as follows:

> *"(G) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of exploration for, and production or extraction of—*
>
> *"(i) fuels, and*
>
> *"(ii) minerals essential to the requirements of the United States,*
>
> *and for required transportation related thereto,".*

(C) The Administrator shall exercise any authority conferred on him under this Act and under any other Act to take steps designed to alleviate shortages in petrochemical feedstocks, and within 30 days from the date of the enactment of this Act shall report to the Congress with respect to shortages of petrochemical feedstocks, of steps taken to alleviate any such shortages, the unemployment impact resulting from such shortages, and any legislative recommendations which he deems necessary to alleviate such shortages.

SEC. 108. FEDERAL ACTIONS TO INCREASE AVAILABLE DOMESTIC PETROLEUM SUPPLIES.

(a) The Administrator may, by rule or order, until May 15, 1975, require the following measures to supplement domestic energy supplies:

(1) the production of designated existing domestic oilfields, at their maximum efficient rate of production, which is the maximum rate at which production may be sustained without detriment to the ultimate recovery of oil and gas under sound engineering and economic principles. Such fields are to be designated by the Secretary of the Interior, after consultation with the appropriate State regulatory agency. Data to determine the maximum efficient rate of production shall be supplied to the Secretary of the Interior by the State regulatory agency which determines the maximum efficient rate of production and by the operators who have drilled wells in, or are producing oil and gas from such fields;

(2) if necessary to meet essential energy needs, production of certain designated existing domestic oilfields at rates in excess of their currently assigned maximum efficient rates. Fields to be so designated, by the Secretary of the Interior or the Secretary of the Navy as to the Federal lands or as to Federal interests in lands under their respective jurisdiction, shall be those fields where the types and quality of reservoirs are such as to permit production at rates in excess of the currently assigned sustainable maximum efficient rate for periods of ninety days or more without excessive risk of losses in recovery;

(3) the adjustment of processing operations of domestic refineries to produce refined products in proportions commensurate with national needs and consistent with the objectives of section 4(b) of the Emergency Petroleum Allocation Act of 1973.

(b) Nothing in this section shall be construed to authorize the production from any Naval Petroleum Reserve now subject to the provisions of chapter 641 of title 10, United States Code.

SEC. 109. OTHER AMENDMENTS TO THE EMERGENCY PETROLEUM ALLOCATION ACT OF 1973.

(a) Section 4 of the Emergency Petroleum Allocation Act of 1973 (as amended by section 104 and 107 of this Act) is further amended by adding at the end of such section the following new subsection:

"(i) If any provision of the regulation under subsection (a) provides that any allocation of residual fuel oil or refined petroleum products is to be based on use of such a product or amounts of such product supplied during a historical period, the regulation shall contain provisions designed to assure that the historical period can be adjusted (or other adjustments in allocations can be made) in order to reflect regional disparities in use, population growth or unusual factors influencing use (including unusual changes in climatic conditions), of such oil or product in the historical period. This subsection shall take effect 30 days after the date of enactment of the Energy Emergency Act. Adjustments for such purposes shall take effect no later than 6 months after the date of enactment of this subsection. Adjustments to reflect population growth shall be based upon the most current figures available from the United States Bureau of the Census."

(b) Section 4(g)(1) of the Emergency Petroleum Allocation Act of 1973 is amended by striking out "February 28, 1975" in each case the term appears and inserting in each case "May 15, 1975".

SEC. 110. PROHIBITION ON INEQUITABLE PRICES.

(a) Section 4 of the Emergency Petroleum Allocation Act of 1973, as amended by this title, is further amended to prevent inequitable prices with respect to sales of crude oil, residual fuel oil, and refined petroleum products, by adding at the end thereof the following new subsection:

"(j)(1) The President shall exercise his authority under this Act and the Economic Stabilization Act of 1970, as amended, so as to specify (or prescribe a manner for determining) prices for all sales of domestic crude oil, residual fuel oil, and refined petroleum products in accordance with this subsection.

"(2) Except as otherwise provided in paragraphs (3) and (4), the provisions of the regulation under subsection (a) of this section which specified (or prescribed a manner for determining) the price of domestic crude oil, residual fuel oil, and refined petroleum products, and which were in effect on the date of enactment of this subsection shall remain in effect until modified pursuant to paragraph (5) of this subsection.

"(3) Commencing 30 days after the date of enactment of this subsection, and until any other ceiling price becomes effective pursuant to the terms of paragraph (5) hereof, the ceiling price for the first sale or exchange of a particular grade of domestic crude oil in a particular field shall be the sum of—

"(A) the hihgest posted price at 6:00 a.m., local time, May 15, 1973, for that grade of crude oil at that field, or if there are no posted prices in that field, the related price for that grade of crude oil which is most similar in kind and quality at the nearest field for which prices are posted; and

"(B) a maximum of $1.35 per barrel.

"(4) The regulation under subsection (a) of this section shall be amended so as to provide that any reduction in the price of crude oil (or any classification thereof), of residual fuel oil, or of a refined petroleum product (including propane) resulting from the provisions of this subsection is passed through on a dollar-for-dollar basis to any subsequent purchaser, reseller, or final consumer in the United States. Such pass-through of price reductions shall, to the extent practicable and consistent with the objectives of this section, be allocated among products refined from such crude oil on a proportional basis, taking into consideration historical price relations among such products.

"(5)(A) The President may, in accordance with the procedures and standards provided in this paragraph, amend the regulation under subsection (a) of this section to specify a different price for domestic crude oil, residual fuel oil, or refined petroleum products, or a different manner for determining the price, other than that provided in paragraph (2) or (3) of this subsection, if he finds that such different price or such different manner for determining such price is necessary to permit the attainment of the objectives of this Act and the purposes described in Section 101(b) of the Energy Emergency Act.

"(B) Every price proposed to be specified pursuant to this subsection which specifies a different price or manner for determining the price for domestic crude oil provided for in paragraph (3) of this subsection, and every price specified for (or every prescribed manner for determining the ceiling price of) residual fuel oil and refined

petroleum products, shall be transmitted to the Congress and shall be accompanied by a detailed analysis setting forth—

"(i) the additional quantities of crude oil, residual fuel oil, refined petroleum products, or if any, that can reasonably be expected to be produced;

"(ii) the effect, if any, upon the demand for crude oil, residual fuel oil, refined petroleum products, or

"(iii) the impact upon the economy as a whole, including the impact upon consumers and the profitability of and employment in industry and business;

"(iv) any significant problems of enforcement or administration; and

"(v) the impact on the preservation of existing competition within the petroleum industry.

resulting from the proposed change in the price of crude oil or manner for determining the price of residual fuel oil or refined petroleum products. Any change in a price of domestic crude oil (or any classification thereof) which is transmitted to Congress within 30 days after enactment of this subsection, which prescribes a different price or a different manner for determining such price provided in paragraph (3) of this subsection shall not take effect until 15 days after the detailed analysis required by this paragraph has been transmitted to the Congress.

"(C) No price for domestic crude oil, or any classification thereof, specified pursuant to this subsection shall exceed the ceiling price provided in paragraph (3) of this subsection by more than 35 percent.

"(D) Ceiling prices or a manner for determining prices established by or pursuant to this subsection are maximum permissible prices, and any seller may sell domestic crude oil, or residual fuel oil, or any refined petroleum product produced therefrom at any lesser price. In the case of any exchange of domestic crude oil, residual fuel oil, or refined petroleum products, the ceiling price shall apply to the total value of the goods and services asked, given or received in exchange for such crude oil, residual fuel oil, or refined petroleum product.

"(6)(A) Any interested person who has reason to believe that any price or manner for determining prices in the regulation under subsection (a) of this section does not prevent inequitable prices may petition the President for a determination under subparagraph (B) of this paragraph.

"(B) Upon petition of any interested person, the President shall by rule determine whether the price of crude oil, residual fuel oil, or any refined petroleum products does not prevent inequitable prices. The President may either affirm such price, or method for determining such price, or establish a different price, or method of determining such price, upon a finding (accompanied by a detailed analysis of such finding as is required under paragraph (5)(B) that such prices as affirmed or reestablished prevents inequitable prices.

"(7)(A) The President may provide, in his discretion under regulations prescribed by him, for such consolidation of petitions as may be necessary or appropriate to carry out the purposes of this subsection.

"(B) The President may make such rules, regulations, and orders as he deems necessary or appropriate to carry out his functions under this subsection.

"(8) *No petition under paragraph (6) of this subsection to determine prices may be filed later than one year after the expiration of this Act or any extension thereof.*

"(9) *The President may at any time act to establish ceiling prices lower than those provided in paragraphs (2) and (5) if he determines that lower ceiling prices will permit the attainment of the objectives of this Act and the purposes described in section 101(b) of the Energy Emergency Act.*

"(10) *The provisions of this subsection shall apply to all crude oil notwithstanding the provisions of subsection (e)(2) of this section and section 406 of Public Law 93-153 (87 Stat. 590).*

"(11)(A) *A proceeding to amend the regulation under subsection (a) of this section with respect to prices as authorized and limited under the terms of paragraph (5) of this subsection and a rulemaking proceeding under paragraph (6) of this subsection shall be governed by section 553 of title 5, United States Code, except that the President shall afford interested persons an opportunity of at least 10 days to present oral and written views, data, and arguments. The 10-day period for presentation of views, data and arguments respecting such action may be postponed until after such action takes effect where the President specifically finds that strict compliance would be likely to cause serious impairment to the operation of the program and such finding and the reasons therefore are set out in detail in the Federal Register at the time of publication.*

"(B) *Judicial review of an amendment to the regulation under subsection (a) of this section with respect to prices under the terms of paragraph (5) of this subsection and a rule promulgated under paragraph (6) of this subsection shall be reviewable pursuant to the provisions of section 211 of the Economic Stabilization Act of 1970, as amended, except that any such amendment and rule may not be enjoined or set aside, in whole or in part, unless the court makes a final determination that such amendment or rule is in excess of the President's authority, is arbitrary or capricious, is otherwise unlawful under the criteria set forth in section 706(2) of title 5, United States Code, or is based on findings required by this subsection which are not supported by substantial evidence.*

"(12) *For purposes of this subsection—*

"(A) *the term 'inequitable price' means a price in excess of a price which is reasonable, taking into consideration the price necessary to obtain sufficient supplies of crude oil, residual fuel oil, and refined petroleum products, to permit the attainment of the objectives of this Act and the purposes described in section 101(b) of the Energy Emergency Act;*

"(B) *the term 'domestic crude oil means crude oil produced in the United States or from the outer Continental Shelf as defined in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331); and*

"(C) *the term 'interested person' includes the United States, any State, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.*"

SEC. 111. PROTECTION OF FRANCHISED DEALERS.

(a) As used in this section:

(1) The term "distributor" means a person engaged in the sale, consignment, or distribution of petroleum products to wholesale or retail outlets whether or not it owns, leases, or in any way controls such outlets.

(2) The term "franchise" means any agreement or contract between a refiner or a distributor and a retailer or between a refiner and a distibutor, under which such retailer or distributor is granted authority to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or distributor, or any agreement or contract between such parties under which such retailer or distributor is granted authority to occupy premises owned, leased, or in any way controlled by a party to such agreement or contract, for the purpose of engaging in the distribution or sale of petroleum products for purposes other than resale.

(3) The term "refiner" means a person engaged in the refining or importing of petroleum products.

(4) The term "retailer" means a person engaged in the sale of any refined petroleum product for purposes other than resale within any State, either under a franchise or independent of any franchise, or who was so engaged at any time after the start of the base period.

(b)(1) A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless he furnishes prior notification pursuant to this paragraph to each distributor or retailer affected thereby. Such notification shall be in writing and sent to such distributor or retailer by certified mail not less than ninety days prior to the date on which such franchise will be canceled, not renewed, or otherwise terminated. Such notification shall contain a statement of intention to cancel, not renew, or to terminate together with the reasons therefor, the date on which such action shall take effect, and a statement of the remedy or remedies available to such distributor or retailer under this section together with a summary of the applicable provisions of this section.

(2) A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless the retailer or distributor whose franchise is terminated failed to comply substantially with any essential and reasonable requirement of such franchise or failed to act in good faith in carrying out the terms of such franchise, or unless such refiner or distributor withdraws entirely from the sale of refined petroleum products in commerce for sale other than resale in the United States.

(c)(1) If a refiner or distributor engages in conduct prohibited under subsection (b) of this section, a retailer or a distributor may maintain a suit against such refiner or distributor. A retailer may maintain such suit against a distributor or a refiner whose actions affect commerce and whose products with respect to conduct prohibited under paragraph (1) or (2) of subsection (b) of this section, he sells or has sold, directly or indirectly, under a franchise. A distributor may maintain such suit against a refiner whose actions affect commerce and whose products he purchases or has purchased or whose products he distributes or has distributed to retailers.

(2) *The court shall grant such equitable relief as is necessary to remedy the effects of conduct prohibited under subsection (b) of this section which it finds to exist including declaratory judgment and mandatory or prohibitive injunctive relief. The court may grant interim equitable relief, and actual and punitive damages (except for actions for a failure to renew) where indicated, in suits under this section, and may, unless such suit is frivolous, direct that costs, including reasonable attorney and expert witness fees, be paid by the defendant. In the case of actions for a failure to renew damages shall be limited to actual damages including the value of the dealer's equity.*

(3) *A suit under this section may be brought in the district court of the United States for any judicial district in which the distributor or the refiner against whom such suit is maintained resides, is found, or is doing business, without regard to the amount in controversy.*

(d) *The provisions of this section expire at midnight, May 15, 1975, but such expiration shall not affect any pending action or pending proceeding, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, May 15, 1975, except that no suit under this section, which is based upon an act committed prior to midnight, May 15, 1975, shall be maintained unless commenced within three years after such act.*

SEC. 112. PROHIBITIONS ON UNREASONABLE ACTIONS.

(a) *Action taken under authority of this Act, the Emergency Petroleum Allocation Act of 1973, or other Federal law resulting in the allocation of petroleum products and electrical energy among classes of users or resulting in restrictions on use of petroleum products and electrical energy, shall be equitable, shall not be arbitrary or capricious, and shall not unreasonably discriminate among classes of users: cious, and shall not unreasonably discriminate among classes of users, except that with respect to allocations of petroleum products no foreign corporation or entity shall receive more favorable treatment in the allocation of petroleum products than that which is accorded by its home country to United States citizens engaged in the same line of commerce, unless the President determines such a policy would be inconsistent with the purposes of this Act and publishes his finding in the Federal Register. Allocations shall contain provisions designed to foster reciprocal and non-discriminatory treatment by foreign countries of United States citizens engaged in commerce.*

(b) *To the maximum extent practicable, any restriction on the use of energy shall be designed to be carried out in such manner so as to be fair and to create a reasonable distribution of the burden of such restriction on all sectors of the economy, without imposing an unreasonably disproportionate share of such burden on any specific industry, business or commercial enterprise, or on any individual segment thereof and shall give due consideration to the needs of commercial, retail, and service establishments whose normal function is to supply goods and services of an essential convenience nature during times of day other than conventional daytime working hours.*

SEC. 113. REGULATED CARRIERS.

(a) *The Interstate Commerce Commission (with respect to common or contract carriers subject to economic regulation under the Inter-*

state Commerce Act), the Civil Aeronautics Board, and the Federal Maritime Commission shall, for the duration of the period beginning on the date of enactment of this Act and ending on May 15, 1975, have authority to take any action for the purpose of conserving energy consumption in a manner found by such Commission or Board to be consistent with the objectives and purposes of the Acts administered by such Commission or Board on its own motion or on the petition of the Administrator which existing law permits such Commission or Board to take upon the motion or petition of any regulated common or contract carrier or other person.

(b) The Interstate Commerce Commission shall, by expedited proceedings, adopt appropriate rules under the Interstate Commerce Act which eliminate restrictions on the operating authority of any motor common carrier of property which require excessive travel between points with respect to which such motor common carrier has regularly performed service under authority issued by the Commission. Such rules shall assure continuation of essential service to communities served by any such motor common carrier.

(c) Within 45 days after the date of enactment of this Act, the Civil Aeronautics Board, the Federal Maritime Commission, and the Interstate Commerce Commission shall report separately to the appropriate committees of the Congress on the need for additional regulatory authority in order to conserve fuel during the period beginning on the date of enactment of this Act and ending on May 15, 1975 while continuing to provide for the public convenience and necessity. Each such report shall identify with specificity—

(1) the type of regulatory authority needed;

(2) the reasons why such authority is needed;

(3) the probable impact on fuel conservation of such authority;

(4) the probable effect on the public convenience and necessity of such authority; and

(5) the competitive impact, if any, of such authority.

Each such report shall further make recommendations with respect to changes in any existing fuel allocation programs which are deemed necessary to provide for the public convenience and necessity during such period.

SEC. 114. ANTITRUST PROVISIONS.

(a) Except as specifically provided in subsection (i), no provision of this Act shall be deemed to convey to any person subject to this Act any immunity from civil and criminal liability or to create defenses to actions, under the antitrust laws.

(b) As used in this section, the term "antitrust laws" means—

(1) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(4) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other pur-

poses", approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(c) (1) To achieve the purposes of this Act, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. Any such advisory committees shall be subject to the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. App. I), whether or not such Act or any of its provisions expires or terminates during the term of this Act or of such committees, and in all cases shall be chaired by a regular full-time Federal employee and shall include representatives of the public. The meetings of such committees shall be open to the public.

(2) A representative of the Federal Government shall be in attendance at all meetings of any advisory committee established pursuant to this section. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(3) A full and complete verbatim transcript shall be kept of all advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of sections 552 (b) (1) and (b) (3) of title 5, United States Code.

(d) The Administrator, subject to the approval of the Attorney General and the Federal Trade Commission, shall promulgate, by rule, standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing crude oil, residual fuel oil or any refined petroleum product may develop and implement voluntary agreements and plans of action to carry out such agreements which the Administrator determines are necessary to accomplish the objectives stated in section 4(b) of the Emergency Petroleum Allocation Act of 1973.

(e) The standards and procedures under subsection (d) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that—

(1) Such agreements and plans of action shall be developed by meetings of committees, councils, or other groups which include representatives of the public, of interested segments of the petroleum industry and of industrial, municipal and private consumers, and shall in all cases be chaired by a regular full-time Federal employee;

(2) Meetings held to develop a voluntary agreement or a plan of action under this subsection shall permit attendance by interested persons and shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission and to the public in the affected community;

(3) Interested persons shall be afforded an opportunity to present, in writing and orally, data, views and arguments at such meetings;

(4) A full and complete verbatim transcript shall be kept of any meeting, conference or communication held to develop, implement or carry out a voluntary agreement or a plan of action under this subsection and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be available for public inspection and copying, subject to provisions of section 552 (b) (1) and (b) (3) of title 5, United States Code.

(f) The Federal Trade Commission may exempt types or classes of meetings, conferences or communications from the requirements of subsections (c) (3) and (e) (4) provided such meetings, conferences, or communications are ministerial in nature and are for the sole purpose of implementing or carrying out a voluntary agreement or plan of action authorized pursuant to this section. Such ministerial meeting, conference or communication may take place in accordance with such requirements as the Federal Trade Commission may prescribe by rule. Such persons participating in such meeting, conference or communication shall cause a record to be made specifying the date such meeting, conference, or communication took place and the persons involved, and summarizing the subject matter discussed. Such record shall be filed with the Federal Trade Commission and the Attorney General, where it shall be made available for public inspection and copying.

(g) (1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, implementation, and carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this Act. Each shall have the right to review, amend, modify, disapprove, or prospectively revoke, on its own motion or upon the request of any interested person, any plan of action or voluntary agreement at any time, and, if revoked, thereby withdraw prospectively the immunity which may be conferred by subsection (i) of this section.

(2) Any voluntary agreement or plan of action entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission 20 days before being implemented, where it shall be made available for public inspection and copying.

(h) (1) The Attorney General and the Federal Trade Commission shall monitor the development, implementation and carrying out of plans of action and voluntary agreements authorized under this section to assure the protection and fostering of competition and the prevention of anticompetitive practices and effects.

(2) The Attorney General and the Federal Trade Commission shall promulgate joint regulations concerning the maintenance of necessary and appropriate documents, minutes, transcripts and other records related to the development, implementation or carrying out of plans of action or voluntary agreements authorized pursuant to this Act.

(3) Persons developing, implementing, or carrying out plans of action or voluntary agreements authorized pursuant to this Act shall maintain those records required by such joint regulations. The Attorney General and the Federal Trade Commission shall have access

to and the right to copy such records at reasonable times and upon reasonable notice.

(4) The Federal Trade Commission and the Attorney General may each prescribe such rules and regulations as may be necessary or appropriate to carry out their responsibilities under this Act. They may both utilize for such purposes and for purposes of enforcement, any and all powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law, including the antitrust laws; and wherever such provision of law refers to "the purposes of this Act" or like terms, the reference shall be understood to be this Act.

(i) There shall be available as a defense to any civil or criminal action brought under the antitrust laws in respect of actions taken in good faith to develop and implement a voluntary agreement or plan of action to carry out a voluntary agreement by persons engaged in the business of producing, refining, marketing or distributing crude oil, residual fuel oil, for any refined petroleum product that—

(1) such action was—

(A) authorized and approved pursuant to this section, and

(B) undertaken and carried out solely to achieve the purposes of this section and in compliance with the terms and conditions of this section, and the rules promulgated hereunder; and

(2) such persons fully complied with the requirements of this section and the rules and regulations promulgated hereunder.

(j) No provision of this Act shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred: (1) prior to the enactment of this Act, (2) outside the scope and purpose or not in compliance with the terms and conditions of this Act and this section, or (3) subsequent to its expiration or repeal.

(k) Effective on the date of enactment of this Act, this section shall apply in lieu of section 6(c) of the Emergency Petroleum Allocation Act of 1973. All actions taken and any authority or immunity granted under such section 6(c) shall be hereafter taken or granted, as the case may be, pursuant to this section.

(l) The provisions of section 708 of the Defense Production Act of 1950, as amended, shall not apply to any action authorized to be taken under this Act or the Emergency Petroleum Allocation Act of 1973.

(m) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every six months, a report on the impact on competition and on small business of actions authorized by this section.

(n) The authority granted by this section (including any immunity under subsection (i)) shall terminate on May 15, 1975.

(o) The exercise of the authority provided in section 113 shall not have as a principal purpose or effect the substantial lessening of competition among carriers affected. Actions taken pursuant to that subsection shall be taken only after providing from the beginning an adequate opportunity for participation by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division, who shall propose any alternative which would avoid or overcome, to the greatest extent practicable, any anticompetitive effects while achieving the purposes of this Act.

SEC. 115. EXPORTS.

To the extent necessary to carry out the purpose of this Act, the Administrator may under authority of this Act, by rule, restrict exports of coal, petroleum products, and petrochemical feedstocks, under such terms as he deems appropriate: Provided, That the Administrator shall restrict exports of coal, petroleum products, or petrochemical feedstocks if either the Secretary of Commerce or the Secretary of Labor certifies that such exports would contribute to unemployment in the United States. The Secretary of Commerce, pursuant to the Export Administration Act of 1969 (but without regard to the phrase "and to reduce the serious inflationary impact of abnormal foreign demand" in section 3(2)(A) of such Act), may restrict the exports of coal, petroleum products, and petrochemical feedstocks, and of materials and equipment essential to the production, transport, or processing of fuels to the extent necessary to carry out the purpose of this Act and sections 4(b) and 4(d) of the Emergency Petroleum Allocation Act of 1973: Provided, That in the event that the Administrator certifies to the Secretary of Commerce that export restrictions of products enumerated in this section are necessary to carry out the purpose of this Act, the Secretary of Commerce shall impose such export restrictions. Rules under this section by the Administrator and actions by the Secretary of Commerce under the Export Administration Act of 1969 shall take into account the historical trading relations of the United States with Canada and Mexico and shall not be inconsistent with subsections (b) and (d) of section 4 of the Emergency Petroleum Allocation Act of 1973.

SEC. 116. EMPLOYMENT IMPACT AND UNEMPLOYMENT ASSISTANCE.

(a) The President shall take into consideration and shall minimize, to the fullest extent practicable, any adverse impact of actions taken pursuant to this Act upon employment. All agencies of government shall cooperate fully under their existing statutory authority to minimize any such adverse impact.

(b) The President shall make grants in accordance with regulations prescribed by him to States to provide assistance to any individual unemployed, if such unemployment heretofore or hereafter is the result of the energy crisis and was in no way due to the fault of such individual, while the individual is unemployed. Unemployment resulting from the energy crisis means unemployment which the State determines to be attributable to fuel allocations, fuel pricing, consumer buying decisions clearly influenced by the energy crisis, and governmental action associated with the energy crisis. Such assistance as a State under such a grant shall provide for not less than 6 months of eligibility and shall be available to individuals not otherwise eligible for unemployment compensation and individuals who have otherwise exhausted their eligibility for such unemployment compensation, and shall continue as long as such unemployment continues or until the individual is reemployed in a suitable position, but not longer than one year after such individual becomes eligible for such assistance. Such assistance shall not exceed the maximum weekly amount under the unemployment compensation program of the State in which the employment loss occurred.

(c) On or before the sixtieth day following the date of enactment of this Act, the President shall report to the Congress concerning the present and prospective impact of energy shortages upon employment. Such report shall contain an assessment of the adequacy of existing programs in meeting the needs of adversely affected workers and shall include legislative recommendataions which the President deems appropriate to meet such needs, including revisions in the unemployment insurance laws.

SEC. 117. USE OF CARPOOLS.

(a) The Secretary of Transportation shall encourage the creation and expansion of the use of carpools as a viable component of our nationwide transportation system. It is the intent of this section to maximize the level of carpool participation in the United States.

(b) The Secretary of Transportation is directed to establish within the Department of Transportation an "Office of Carpool Promotion" whose purpose and responsibilities shall include—

(1) responding to any and all requests for information and technical assistance on carpooling and carpooling systems from units of State and local governments and private groups and employees;

(2) promoting greater participation in carpooling through public information and the preparation of such materials for use by State and local governments;

(3) encouraging and promoting private organizations to organize and operate carpool systems for employees;

(4) promoting the cooperation and sharing of responsibilities between separate, yet proximately close, units of government in coordinating the operations of carpool systems; and

(5) promoting other such measures that the Secretary determines appropriate to achieve the goal of this subsection.

(c) The Secretary of Transportation shall encourage and promote the use of incentives such as special parking privileges, special roadway lanes, toll adjustments, and other incentives as may be found beneficial and administratively feasible to the furtherance of carpool ridership, and consistent with the obligations of the State and local agencies which provide transportation services.

(d) The Secretary of Transportation shall allocate the funds appropriated pursuant to the authorization of subsection (f) according to the following distribution between the Federal and State or local units of government:

(1) The initial planning process—up to 100 percent Federal.

(2) The systems design process—up 100 percent Federal.

(3) The initial startup and operation of a given system—60 percent Federal and 40 percent State or local with the Federal portion not to exceed 1 year.

(e) Within 12 months of the date of enactment of this Act, the Secretary of Transportation shall make a report to Congress of all his activities and expenditures pursuant to this section. Such report shall include any recommendations as to future legislation concerning carpooling.

(f) The sum of $5,000,000 is authorized to be appropriated for the conduct of programs designed to achieve the goals of this section, such authorization to remain available for 2 years.

(g) For purposes of this section, the terms "local governments" and "local units of government" include any metropolitan transportation organization designated as being responsible for carrying out section 134 of title 23, United States Code.

(h) As an example to the rest of our Nation's automobile users, the President of the United States shall take such action as is necessary to require all agencies of Government, where practical, to use economy model motor vehicles.

(i)(1) The President shall take action to require that no Federal official or employee in the executive branch below the level of Cabinet officer be furnished a limousine for individual use. The provisions of this subsection shall not apply to limousines furnished for use by officers or employees of the Federal Bureau of Investigation, or to those persons whose assignments necessitate transportation by limousines because of diplomatic assignment by the Secretary of State.

(2) For purposes of this subsection, the term "limousine" means a type 6 vehicle as defined in the Interim Federal Specifications issued by the General Services Administration, December 1, 1973.

(3)(A) The President shall take action to insure the enforcement of 31 U.S.C. 638a.

(B) No funds shall be expended under authority of this or any other Act for the purpose of furnishing a chauffeur for individual use to any Federal official or employee.

SEC. 118. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.

(a)(1) Subject to paragraphs (2), (3), and (4) of this subsection, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply to any rule, regulation, or order (including a rule, regulation, or order issued by a State or officer thereof) under this title, under section 4(h) of the Emergency Petroleum Allocation Act of 1973; except that this subsection shall not apply to any rule, regulation, or order issued under the Emergency Petroleum Allocation Act of 1973 (as amended by this title) other than section 4(h) thereof, nor to any rule under section 113 of this title.

(2) Notice of any proposed rule or order described in paragraph (1) shall be given by publication of such proposed rule or order in the Federal Register. In each case, a minimum of ten days following such publication shall be provided for opportunity to comment; except that the requirements of this paragraph as to time of notice and opportunity to comment may be waived where strict compliance is found to cause serious impairment to the operation of the program to which such rule or order relates and such findings are set out in detail in such rule or order. In addition, public notice of all rules or orders promulgated by officers of a State or political subdivision thereof or to State or local boards pursuant to this Act shall to the maximum extent practicable be achieved by publication of such rules or orders in a sufficient number of newspapers of statewide circulation calculated to receive widest possible notice.

(3) In addition to the requirements of paragraph (2), if any rule or order described in paragraph (1) is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and

arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the implementation of such rule or order, but in all cases such opportunity shall be afforded no later than 45 days after the implementation of any such rule or order. A transcript shall be kept of any oral presentation.

(4) Any officer or agency authorized to issue rules or orders described in paragraph (1) shall provide for the making of such adjustments, consistent with the other purposes of this Act or the Emergency Petroleum Allocation Act of 1973 (as the case may be), as may be necessary to prevent special hardships, inequity, or an unfair distribution of burdens and shall in rules prescribed by it establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, or an exception to or exemption from, such rules and orders. If such person is aggrieved or adversely affected by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the officer or agency and may obtain judicial review in accordance with subsection (b) or other applicable law when such denial becomes final. The officer or agency shall, in rules prescribed by it, establish appropriate procedures, including a hearing where deemed advisable, for considering such requests for action under this paragraph.

(b) (1) Judicial review of administrative rulemaking of general and national applicability done under this title may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days from the date of promulgation of any such rule or regulation, and judicial review of administrative rulemaking of general, but less than national, applicability done under this title may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule or regulation, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule or regulation is to have effect.

(2) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising under this title, or under regulations or orders issued thereunder, except any actions taken by the Civil Aeronautics Board, the Interstate Commerce Commission, Federal Power Commission, or the Federal Maritime Commission, or any actions taken to implement or enforce any rule or order by any officer of a State or political subdivision thereof or State or local board which has been delegated authority under section 122 of this Act except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the constitutionality of this title or the validity of action taken by any agency under this title). If in any such proceeding an issue by way of defense is raised based on the constitutionality of this Act or the validity of agency action under this title, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code. Cases or controversies arising under any rule or order of any officer of a State or political subdivision thereof or a State or local board may be heard in either (1) any appropriate State court,

and (2) without regard to the amount in controversy, the district courts of the United States.

(3) This subsection shall not apply to any rule, regulation, or order issued under the Emegency Petroleum Allocation Act of 1973 nor to any rule under section 113 of this title.

(c) The Administrator may by rule prescribe procedures for State or local boards which carry out functions under this Act or the Emergency Petroleum Allocation Act of 1973. Such procedures shall apply to such boards in lieu of subsection (a), and shall require that prior to taking any action, such boards shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) at least 10 days before taking the action. Such boards shall be of balanced composition reflecting the makeup of the community as a whole.

(d) In addition to the requirements of section 552 of title 5, United States Code, any agency authorized by this title of the Emergency Petroleum Allocation Act of 1973 to issue rules or orders shall make available to the public all internal rules and guidelines which may form the basis, in whole or in part, for any rule or order with such modifications as are necessary to insure confidentiality protected under such section 552. Such agency shall, upon written request of a petitioner filed after any grant or denial of a request for exception or exemption from rules or orders furnish the petitioner with a written opinion setting forth applicable facts and the legal basis in support of such grant or denial. Such opinions shall be made available to the petitioner and the public within thirty days of such request and with such modifications as are necessary to insure confidentiality of information protected under such section 552.

SEC. 119. PROHIBITED ACTS.

It shall be unlawful for any person to violate any provision of title I of this Act (other than provisions of this Act which make amendments to the Emergency Petroleum Allocation Act of 1973 and section 113) or to violate any rule, regulation (including an energy conservation plan) or order issued pursuant to any such provision.

SEC. 120. ENFORCEMENT.

(a) Whoever violates any provision of section 119 shall be subject to a civil penalty of not more than $2,500 for each violation.

(b) Whoever willfully violates any provision of section 119 shall be fined not more than $5,000 for each violation.

(c) It shall be unlawful for any person to offer for sale or distribute in commerce any product or commodity in violation of an applicable order or regulation issued pursuant to this Act. Any person who knowingly and willfully violates this subsection after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to this Act shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(d) Whenever it appears to any person authorized by the Administrator to exercise authority under this Act that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of section 119, such person may request the Attorney General to bring an action in the appropriate dis-

trict court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by section 119.

(e) Any person suffering legal wrong because of any act or practice arising out of any violation of section 119 may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this subsection shall authorize any person to recover damages.

SEC. 121. USE OF FEDERAL FACILITIES.

Whenever practicable, and for the purpose of facilitating the transportation and storage of fuel, agencies or departments of the United States are authorized, during the period beginning on the date of enactment of this Act and ending May 15, 1975, to enter into arrangements for the acquisition or use by domestic public entities and private industries of equipment or facilities which are surplus to the needs of such agency or department and appropriate to the transportation and storage of fuel, except that such arrangements may be made (1) only after the Administrator finds that such equipment or facilities are not available from private sources and (2) only on the basis of compensation for the acquisition or use of such equipment or facilities at fair market value prices or rentals.

SEC. 122. DELEGATION OF AUTHORITY AND EFFECT ON STATE LAW.

(a) The Administrator may delegate any of his functions under the Emergency Petroleum Allocation Act of 1973 or this Act to any officer or employee of the Federal Energy Emergency Administration as he deems appropriate. The Administrator may delegate any of his functions relative to implementation and enforcement of the Emergency Petroleum Allocation Act of 1973 or this Act to officers of a State or political subdivision thereof or to State or local boards of balanced composition reflecting the make-up of the community as a whole. Such officers or boards shall be designated and established in accordance with regulations which the Administration shall promulgate under this Act. Section 5(b) of the Emergency Petroleum Allocation Act of 1973 is repealed effective on the effective date of the transfer of functions under such Act to the Administrator pursuant to section 103 of this Act.

(b) No State law or State program in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation, order, or energy conservation plan issued pursuant to this Act except insofar as such State law or State program is inconsistent with the provisions of this Act, or such a regulation, order, or plan.

SEC. 123. GRANTS TO STATES.

Any funds authorized to be appropriated under section 127(b) shall be available for the purpose of making grants to States to which the Administrator has delegated authority under section 122 of this Act, or for the administration of appropriate State or local energy con-

servation programs which are the basis of an exemption made pursuant to section 105(a)(2) of this Act from a Federal energy conservation plan which has taken effect under section 105 of this Act. The Administrator shall make such grants upon such terms and conditions as he may prescribe by rule.

SEC. 124. REPORTS ON NATIONAL ENERGY RESOURCES.

(a) For the purpose of providing to the Administrator, Congress, the States, and the public, to the maximum extent possible, reliable data on reserves, production, distribution, and use of petroleum products, natural gas, and coal, the Administrator shall promptly publish for public comment a regulation requiring that persons doing business in the United States, who, on the date of enactment of this Act, are engaged in exploring, developing, processing, refining, or transporting by pipeline, any petroleum product, natural gas, or coal, shall provide detailed reports to the Administrator every sixty calendar days. Such reports shall show for the preceding sixty calendar days such person's (1) reserves of crude oil, natural gas, and coal; (2) production and destination of any petroleum product, natural gas, and coal; (3) refinery runs byproduct; and (4) other data required by the Administrator for such purpose. Such regulation shall also require that such persons provide to the Administrator such reports for the period from January 1, 1970, to the date of such person's first sixty day report. Such regulation shall be promulgated 30 days after such publication. The Administrator shall publish quarterly in the Federal Register a meaningful summary analysis of the data provided by such reports.

(b) The reporting requirements of this section shall not apply to the retail operations of persons required to file such reports. Where a person shows that all or part of the data required by this section is being reported by such person to another Federal agency, the Administrator may exempt such person from reporting all or part of such data directly to him, and upon such exemption, such agency shall, notwithstanding any other provision of law, provide such data to the Administrator. The district courts of the United States are authorized, upon application of the Administrator, to require enforcement of such reporting requirements.

(c) Upon a showing satisfactory to the Administrator by any person that any report or part thereof obtained under this section from such person or from a Federal agency would, if made public, divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person, such report, or portion thereof, shall be confidential in accordance with the provisions of section 1905 of title 18 of the United States Code, except that such report or part thereof shall not be deemed confidential for purposes of disclosure to (1) any delegate of the Federal Energy Emergency Administration for the purpose of carrying out this Act, (2) the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the General Accounting Office when necessary to carry out those agencies' duties and responsibilities under this and other statutes, and (3) the Congress or any Committee of Congress upon request of the Chairman. The provisions of this section shall expire on May 15, 1975.

SEC. 125. INTRASTATE GAS.

Nothing in this Act shall expand the authority of the Federal Power Commission with respect to sales of non-jurisdictional natural gas.

SEC. 126. EXPIRATION.

The authority under this title to prescribe any rule or order or take other action under this title, or to enforce any such rule or order, shall expire at midnight, May 15, 1975, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, May 15, 1975.

SEC. 127. AUTHORIZATIONS OF APPROPRIATIONS.

(a) There are authorized to be appropriated to the Federal Energy Emergency Agency to carry out its functions under this Act and under other laws, and to make grants to States under section 123, $75,000,000 for the fiscal year ending June 30, 1974, and $75,000,000 for the fiscal year ending June 30, 1975.

(b) For the purpose of making payments under grants to States under section 123, there are authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1974, and $75,000,000 for the fiscal year ending June 30, 1975.

(c) For the purpose of making payments under grants to States under section 116, there is authorized to be appropriated $500,000,000 for the fiscal year ending June 30, 1974.

SEC. 128. SEVERABILITY.

If any provision of this Act, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 129. IMPORTATION OF LIQUEFIED NATURAL GAS.

Notwithstanding the provisions of section 3 of the Natural Gas Act (or any other provisions of law) the President may by order, on a finding that such action would be consistent to the public interest, authorize on a shipment-by-shipment basis the importation of liquefied natural gas from a foreign country: Provided, however, That the authority to act under this section shall not permit the importation of liquefied natural gas which had not been authorized prior to the date of expiration of this Act and which is in transit on such date.

SEC. 130. LOANS TO HOMEOWNERS AND SMALL BUSINESSES.

(a) The Department of Housing and Urban Development and the Small Business Administration are authorized to make low interest loans to homeowners and small businesses for the purpose of installing new and improved insulation, storm windows, and more efficient heating units, and adopt such rules and regulations as are necessary to achieve the objectives of this section.

(b) It is the sense of the Congress that small business enterprises should cooperate to the maximum extent possible in achieving the purposes of the Act and that they should have their varied needs consid-

should cooperate to the maximum extent possible in achieving the purgrams provided for by this Act.

(c) In order to carry out the policy stated in subsection (b)—

(1) the Small Business Administration (A) shall to the maximum extent possible provide small business enterprises with full information concerning the provisions of the programs provided for in this Act which particularly affect such enterprises, and the activities of the various departments and agencies under such provisions, and (B) shall, as a part of its annual report, provide to the Congress a summary of the actions taken under programs provided for in this Act which have particularly affected such enterprises;

(2) to the extent feasible, Federal and other governmental bodies shall seek the views of small business in connection with adopting rules and regulations under the programs provided for in this Act and in administering such programs; and

(3) in administering the programs provided for in this Act, special provision shall be made for the expeditious handling of all requests, applications, or appeals from small business enterprises.

(d) Any controls instituted shall be insofar as practicable, equitably applied to all businesses, whether large or small; and due consideration shall be given to the unique problems of retailing establishments and small business so as not to discriminate or cause unnecessary hardship in the administration or implementation of the provisions of this Act.

TITLE II—COORDINATION WITH ENVIRONMENTAL PROTECTION REQUIREMENTS

SEC. 201. SUSPENSION AUTHORITY.

Title I of the Clean Air Act (42 U.S.C. 1857 et seq.) is amended by adding at the end thereof the following new section:

"ENERGY EMERGENCY AUTHORITY

"SEC. 119. (a)(1)(A) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before November 1, 1974, temporarily suspend any stationary source fuel or emission limitation as it applies to any person, if the Administrator finds that such person will be unable to comply with such limitation during such period solely because of unavailability of types or amounts of fuels. Any suspension under this paragraph and any interim requirement on which such suspension is conditioned under paragraph (3) shall be exempted from any procedural requirements set forth in this Act or in any other provision of local, State, or Federal law; except as provided in subparagraph (B).

"(B) The Administrator shall give notice to the public of a suspension and afford the public an opportunity for written and oral presentation of views prior to granting such suspension unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In any case, before granting such a suspension he shall give actual notice to the Governor of the State, and to the chief executive officer of the local government entity in which the affected source or sources are located. The granting or denial of such

suspension and the imposition of an interim requirement shall be subject to judicial review only on the grounds specified in paragraphs (2)(B) and (2)(C) of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304(a)(2) or 307 (b) and (c) of this Act.

"(2) In issuing any suspension under paragraph (1) the Administrator is authorized to act on his own motion without application by any source or State.

"(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the source receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and (C) requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available to that person (as determined by the Administrator). For purposes of clause (C) of this paragraph, availability of natural gas or petroleum products which enable compliance shall not make a suspension inapplicable to a source described in subsection (b)(1) of this section.

"(4) For purposes of this section:

"(A) The term 'stationary source fuel or emission limitation' means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under this Act (other than section 303, 111(b), or 112) or contained in an applicable implementation plan, and which is designed to limit stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type or grade or pollution characteristic thereof.

"(B) The term 'stationary source' has the same meaning as such term has under section 111(a)(3).

"(b)(1) Except as provided in paragraph (2) of this subsection, any fuel-burning stationary source—

"(A) which is prohibited from using petroleum products or natural gas as fuel by reason of an order issued under section 106(a) of the Energy Emergency Act, or

"(B) which (i) the Administrator of the Environmental Protection Agency determines began conversion to the use of coal as fuel during the 90-day period ending on December 15, 1973, and (ii) the Administrator of the Federal Energy Emergency Administration determines should use coal after November 1, 1974, after balancing on a plant-by-plant basis the environmental effects of such conversion against the need to fulfill the purposes of the Energy Emergency Act,

and which converts to the use of coal as fuel, shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source. For purposes of this paragraph, the term "began conversion" means action by the owner or operator of a source during the 90-day period ending

December 15, 1973 (such as entering into a contract binding on the operator of the source for obtaining coal, or equipment or facilities to burn coal; expending substantial sums to permit such source to burn coal; or applying for an air pollution variance to enable the source to burn coal) which the Administrator finds evidences a decision (made prior to December 15, 1973) to convert to burning coal as a result of the unavailability of an adequate supply of fuels required for compliance with the applicable implementation plan, and a good faith effort to expeditiously carry out such decision.

"(2)(A) Paragraph (1) of this subsection shall apply to a source only if the Administrator finds that emissions from the source will not materially contribute to a significant risk to public health and if the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved, after notice to interested persons and opportunity for presentation of views (including oral presentation of views). A plan submitted under the preceding sentence shall be approved only if it provides (i) for compliance by the means specified in subparagraph (B), and in accordance with a schedule which meets the requirements of such subparagraph; and (ii) that such source will comply with requirements which the Administrator shall prescribe to assure that emmissions from such source will not materially contribute to a significant risk to public health. The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

"(B) The Administrator shall prescribe regulations requiring that any source to which this subsection applies submit and obtain approval of its means for and schedule of compliance. Such regulations shall include requirements that such schedules shall include dates by which such source must—

"(i) enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining a long-term supply of coal which enables such source to achieve the emission reduction required by subparagraph (C), or

"(ii) if coal which enables such source to achieve such emission reduction is not available to such source, (I) enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining a long-term supply of other coal or coal by-products, and (II) take steps to obtain continuous emission reduction systems necessary to permit such source to burn such coal or coal by-products and to achieve the degree of emission reduction required by subparagraph (C) (which steps and systems must have received prior approval of the Administrator as being adequate to effectuate the purposes of this section).

"(C) Regulations under subparagraph (B) shall require that the source achieve the most stringent degree of emission reduction that such source would have been required to achieve under the applicable implementation plan which was in effect on the date of enactment of this section (or if no applicable implementation plan was in effect on such date, under the first applicable implementation plan which

takes effect after such date). Such degree of emission reduction shall be achieved as soon as practicable, but not later than January 1, 1979; except that, in the case a source for which a continuous emission reduction system is required for sulphur-related emissions, reduction of such emissions shall be achieved on a date designated by the Administrator (but not later than January 1, 1979). Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable including requirements described in clauses (A) and (B) of subsection (a) (3).

"(D) The Administrator (after notice to interested persons and opportunity for presentation of views, including oral presentations of views, to the extent practicable) (i) may, prior to November 1, 1974, and shall thereafter prohibit the use of coal by a source to which paragraph (1) applies if he determines that the use of coal by such source is likely to materially contribute to a significant risk to public health; and (ii) may require such source to use coal of any particular type, grade, or pollution characteristic if such coal is available to such source. Nothing in this subsection (b) shall prohibit a State or local agency from taking action which the Administrator is authorized to take under this subparagraph.

"(3) For purposes of this subsection, the term 'air pollution requirement' means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including this Act (except for any requirement prescribed under this subsection or section 303), and which is designed to limit stationary source emissions resulting from combustion of fuels (including a restriction on the use or content of fuels). A conversion to coal to which this subsection applies shall not be deemed to be a modification for purposes of section 111(a) (2) and (4) of this Act.

"(4) A source to which this subsection applies may, upon the expiration of the exemption under paragraph (1), obtain a one year postponement of the application of any requirement of an applicable implementation plan under the conditions and in the manner provided in section 110(f).

"(c) The Administrator may by rule establish priorities under which manufacturers of continuous emission reduction systems shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to users in air quality control regions with the most severe air pollution. No rule under this subsection may impair the obligation of any contract entered into before enactment of this section. No State or political subdivision may require any person to use a continuous emission reduction system for which priorities have been established under this subsection except in accordance with such priorities.

"(d) The Administrator shall study, and report to Congress not later than May 31, 1974, with respect to—

"(1) the present and projected impact on the program under this Act of fuel shortages and of allocation and end-use allocation programs;

"(2) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction

systems would have on the total environment and on supplies of fuel and electricity;

"*(3) the number of sources and locations which must use such technology based on projected fuel availability data;*

"*(4) priority schedule for implementation of continuous emission reduction technology, based on public health or air quality;*

"*(5) evaluation of availability of technology to burn municipal solid waste in these sources; including time schedules, priorities analysis of unregulated pollutants which will be emitted and balancing of health benefits and detriments from burning solid waste and of economic costs;*

"*(6) projections of air quality impact of fuel shortages and allocations;*

"*(7) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time frames prescribed in the Act, including associated considerations of cost, time frames, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;*

"*(8) proposed allocations of continuous emission reduction technology for nonsolid waste producing systems to sources which are least able to handle solid waste byproduct, technologically, economically, and without hazard to public health, safety, and welfare; and*

"*(9) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentration of sulfur dioxide in the ambient air.*

"*(e) No State or political subdivision may require any person to whom a suspension has been granted under subsection (a) to use any fuel the unavailability of which is the basis of such person's suspension (except that this preemption shall not apply to requirements identical to Federal interim requirements under subsection (a)(1)).*

"*(f)(1) It shall be unlawful for any person to whom a suspension has been granted under subsection (a)(1) to violate any requirement on which the suspension is conditioned pursuant to subsection (a)(3).*

"*(2) It shall be unlawful for any person to violate any rule under subsection (c).*

"*(3) It shall be unlawful for the owner or operator of any source to fail to comply with any requirement under subsection (b) or any regulation, plan, or schedule thereunder.*

"*(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i)(3).*

"*(g) Beginning January 1, 1975, the Administrator shall publish at no less than 180-day intervals, in the Federal Register the following:*

"*(1) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (b) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsections.*

"*(2) Up-to-date findings on the impact of this section upon—*

"*(A) applicable implementation plans, and*

"*(B) ambient air quality.*

"(*h*) *Nothing in this section shall affect the power of the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.*

"(*i*) (*1*) *In order to reduce the likelihood of early phaseout of existing electric generating facilities during the energy emergency, any electric generating power plant* (*A*) *which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on the date of enactment of the Energy Emergency Act) of the operator of such plant,* (*B*) *for which a certification to that effect has been filed by the operator of the plant with the Environmental Protection Agency and the Federal Power Commission, and* (*C*) *for which the Commission has determined that the certification has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single one-year postponement as provided in paragraph* (*2*).

"(*2*) *Prior to the date on which any plant eligible under paragraph* (*1*) *is required to comply with any requirement of an applicable implementation plan, such source may apply (with the concurrence of the Governor of the State in which the plant is located) to the Administrator to postpone the applicability of such requirement to such source for not more than one year. If the Administrator determines, after balancing the risk to public health and welfare which may be associated with a postponement, that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increases to pay for such costs, and other appropriate factors, then the Administrator shall grant a postponement of any such requirement.*

"(*3*) *The Administrator shall, as a condition of any postponement under paragraph* (*2*), *prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph* (*2*).

"(*j*) (*1*) *The Administrator may, after public notice and opportunity for presentation of views in accordance with section 553 of title 5, United States Code, and after consultation with the Federal Energy Emergency Administration, designate persons to whom fuel exchange orders should be issued. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any suspension under subsection* (*a*) *of this section or conversion to coal to which subsection* (*b*) *applies or of any allocation under the Energy Emergency Act or the Emergency Petroleum Allocation Act of 1973.*

"(*2*) *The Administrator of the Federal Energy Emergency Administration shall issue exchange orders to such persons as are designated by the Administrator under paragraph* (*1*) *requiring the exchange of any fuel subject to allocation under the preceding Acts effective no later than 45 days after the date of the designation under paragraph* (*1*), *unless the Administrator of the Federal Energy Emergency Administration determines, after consultation with the Administrator, that the costs or consumption of fuel, resulting from such exchange order, will be excessive.*

"(3) *Violation of any exchange order issued under paragraph (2) shall be a prohibited act and shall be subject to enforcement action and sanctions in the same manner and to the same extent as a violation of any requirement of the regulation under section 4 of the Emergency Petroleum Allocation Act of 1973.*"

SEC. 202. IMPLEMENTATION PLAN REVISIONS.

(a) Section 110(a) of the Clean Air Act is amended in paragraph (3) by inserting "(A)" after "(3)" and by adding at the end thereof the following new subparagraph:

"*(B)(1) For any air quality control region in which there has been a conversion to coal under section 119(b), the Administrator shall review the applicable implementation plan and no later than one year after the date of such conversion determine whether such plan must be revised in order to achieve the national primary standard which the plan implements. If the Administrator determines that any such plan is inadequate, he shall require that a plan revision be submitted by the State within three months after the date of notice to the State of such determination. Any plan revision which is submitted by the State after notice and public hearing shall be approved or disapproved by the Administrator, after public notice and opportunity for public hearing, but no later than three months after the date required for submission of the revised plan. If a plan provision (or portion thereof) is disapproved (or if a State fails to submit a plan revision), the Administrator shall, after public notice and opportunity for a public hearing, promulgate a revised plan (or portion thereof) not later than three months after the date required for approval or disapproval.*

"*(2) Any requirement for a plan revision under paragraph (1) and any plan requirement promulgated by the Administrator under such paragraph shall include reasonable and practicable measures to minimize the effect on the public health of any conversion to which section 119(b) applies.*"

(b) Subsection (c) of section 110 of the Clean Air Act (42 U.S.C. 1857 C–5) is amended by inserting "(1)" after "(c)"; by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and by adding the following new paragraph:

"*(2)(A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than May 1, 1974, on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Administrator of the Federal Energy Emergency Administration, and the Chairman of the Council on Environmental Quality.*

"(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any applicable implementation plan submitted by a State on such plan's including a parking surcharge regulation.

"(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

"(D) For purposes of this paragraph, the term 'parking surcharge regulation' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles. The term 'management of parking supply' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations. The term 'preferential bus/carpool lane' shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses and/or carpools."

SEC. 203. MOTOR VEHICLE EMISSIONS.

(a) Section 202(b)(1)(A) of the Clean Air Act is amended by striking out "1975" and inserting in lieu thereof "1977"; and by inserting after "(A)" the following: "The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5)(A) of this subsection for light-duty vehicles and engines manufactured during model year 1975."

(b) Section 202(b)(1)(B) of such Act is amended by striking out "1976" and inserting in lieu thereof "1978"; and by inserting after "(B)" the following: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitro-

gen from light duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that emissions of such vehicles and engines may not exceed 2.0 grams per vehicle mile."

(c) Section 202(b)(5)(A) of such Act is amended to read as follows:

"(5)(A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within 60 days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977."

(d) Section 202(b)(5)(B) of the Clean Air Act is repealed and the following subparagraphs redesignated accordingly.

SEC. 204. CONFORMING AMENDMENTS.

(a)(1) Section 113(a)(3) of the Clean Air Act is amended by striking out "or" before "112(c)", by inserting a comma in lieu thereof, and by inserting after "hazardous emissions)" the following: ", or 119(f) (relating to priorities and certain other requirements)".

(2) Section 113(b)(3) of such Act is amended by striking out "or 112(c)" and inserting in lieu thereof ", 112(c), or 119(f)".

(3) Section 113(c)(1)(C) of such Act is amended by striking out "or section 112(c)" and inserting in lieu thereof ", section 112(c), or section 119(f)".

(4) Section 114(a) of such Act is amended by inserting "119 or" before "303".

(b) Section 116 of the Clean Air Act is amended by inserting "119 (b), (c) and (e)," before "209".

SEC. 205. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT.

(a) Any allocation program provided for in title I of this Act or in the Emergency Petroleum Allocation Act of 1973, shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the country designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

(b) In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal to which section 119 of the Clean Air Act applies, the Department of Health, Education, and Welfare shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term

studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c) No action taken under this Act shall, for a period of 1 year after initiation of such action, be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856). However, before any action under this Act that has a significant impact on the environment is taken, if practicable, or in any event within 60 days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a 30-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action take under this Act which will be in effect for more than a one year period (other than action taken pursuant to subsection (d) of this section) or any action to extend an action taken under this Act to a total period of more than 1 year shall be subject to the full provisions of the National Environmental Policy Act notwithstanding any other provision of this Act.

(d) Notwithstanding subsection (c) of this section, in order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 (83 Stat. 856) for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

SEC. 206. ENERGY CONSERVATION STUDY.

(a) The Administrator of the Federal Energy Emergency Administration shall conduct a study on potential methods of energy conservation and, not later than 6 months after the date of enactment of this Act, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

(1) the energy conservation potential of restricting exports of fuels or energy-intensive products or goods, including an analysis of balance of payments and foreign relations implications of any such restrictions;

(2) federally sponsored incentives for the use of public transit, including the need for authority to require additional production of buses or other means of public transit and Federal subsidies for the duration of the energy emergency for reduced fares and additional expenses incurred because of increased service;

(3) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource recovery in order to

reduce energy demand, including the economic costs and fuel consumption trade-off which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials;

(4) the costs and benefits of electrifying rail lines in the United States with a high density of traffic; including (A) the capital costs of such electrification, the oil fuel economies derived from such electrification, the ability of existing power facilities to supply the additional power load, and the amount of coal or other fossil fuels required to generate the power required for railroad electrification, and (B) the advantages to the environment of electrification of railroads in terms of reduced fuel consumption and air pollution and disadvantages to the environment from increased use of fossil fuel such as coal; and

(5) means for incentives or disincentives to increase efficiency of industrial use of energy.

(b) Within 90 days of the date of enactment of this Act, the Secretary of Transportation, after consultation with the Federal Energy Emergency Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public mass transportation systems and encouraging increased ridership as alternatives to automobile travel.

(c) Such plan shall include, but shall not be limited to—

(1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the provision of expanded mass transportation service in urban areas;

(2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under section 142(a)(2) of title 23, United States Code (the "Federal Aid Highway Act of 1973"), for the purpose of providing additional capacity for and encouraging increased use of public mass transportation systems;

(3) recommendations for a program of demonstration projects to determine the feasibility of fare-free and low-fare urban mass transportation systems, including reduced rates for elderly and handicapped persons during nonpeak hours of transportation;

(4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;

(5) recommendations on the feasibility of providing tax incentives for persons who use public mass transportation systems.

(d) In consultation with the Federal Energy Emergency Administrator, the Secretary of Transportation shall make an investigation and study for the purpose of conserving energy and assuring that the essential fuel needs of the United States will be met by developing a high-speed ground transportation system between the cities of Tijuana in the State of Baja California, Mexico, and Vancouver in the Province of British Columbia, Canada, by way of the cities of Seattle in the State of Washington, Portland in the State of Oregon, and Sacramento, San Francisco, Fresno, Los Angeles and San Diego in the State

of California. In carrying out such investigation and study the Secretary shall consider, but shall not be limited to—

(1) the efficiency of energy utilization and impact on energy resources of such a system, including the future impact of existing transportation systems on energy resources if such a system is not established;

(2) coordination with other studies undertaken on the State and local levels; and

(3) such other matters as he deems appropriate.

The Secretary of Transportation shall report the results of the study and investigation pursuant to this Act, together with his recommendations, to the Congress and the President no later than December 31, 1974.

SEC. 207. REPORTS.

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 201 through 205 of this title.

SEC. 208. FUEL ECONOMY STUDY.

Title II of the Clean Air Act is amended by redesignating section 213 as section 214 and by adding the following new section:

"FUEL ECONOMY IMPROVEMENT FROM NEW MOTOR VEHICLES

SEC. 213. (a) (1) The Administrator and the Secretary of Transportation shall conduct a joint study, and shall report to the Committee on Interstate and Foreign Commerce of the United States House of Repsentatives and the Committees on Public Works and Commerce of the United States Senate within 120 days following the date of enactment of this section, concerning the practicability of establishing a fuel economy improvement standard of 20 percent for new motor vehicles manufactured during and after model year 1980. Such study and report shall include, but not be limited to, the technological problems of meeting any such standard, including the leadtime involved; the test procedures required to determine compliance; the economic costs associated with such standards, including any beneficial economic impact; the various means of enforcing such standard; the effect on consumption of natural resources, including energy consumed; and the impact of applicable safety and emission standards. In the course of performing such study, the Administrator and the Secretary of Transportation shall utilize the research previously performed in the Department of Transportation, and the Administrator and the Secretary shall consult with the Administrator of the Federal Energy Emergency Administration, the Chairman of the Council on Environmental Quality, and the Secretary of the Treasury. The Office of Management and Budget may review such report before its submission to Congress but the Office may not revise the report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting such report. In connection with such study, the Administrator may utilize the authority provided in section 307(a) of this Act to obtain necessary information.

"(2) For the purpose of this section, the term 'fuel economy improvement standard' means a requirement of a percentage increase in the number of miles of transportation provided by a manufacturer's

entire annual production of new motor vehicles per unit of fuel consumed, as determined for each manufacturer in accordance with test procedures established by the Administrator pursuant to this Act. Such term shall not include any requirement for any design standard or any other requirement specifying or otherwise limiting the manufacturer's discretion in deciding how to comply with the fuel economy improvement standard by any lawful means."

TITLE III—STUDIES AND REPORTS

SEC. 301. AGENCY STUDIES.

The following studies shall be conducted, with reports on their results submitted to the Congress:

(1) Within 30 days after the date of enactment of this Act:

(A) The Administrator shall conduct a review of all rulings and regulations issued pursuant to the Economic Stabilization Act to determine if such rulings and regulations are contributing to the shortage of fuels and of materials associated with the production of energy supplies.

(B) All Federal departments and agencies, including the Federal regulatory agencies, are directed to undertake a survey of all activities over which they have special expertise or jurisdiction and identify and recommend to the Congress and to the President specific proposals to significantly increase energy supply or to reduce energy demand through conservation programs.

(C) The Secretary of the Treasury and the Director of the Cost of Living Council shall recommend to the Congress specific incentives to increase energy supply, reduce demand, to encourage private industry and individual persons to subscribe to the goals of this Act. This study shall also include an analysis of the price-elasticity of demand for gasoline.

(D) The Administrator shall report to the Congress concerning the present and prospective impact of energy shortages upon employment. Such report shall contain an assessment of the adequacy of existing programs in meeting the needs of adversely affected workers, together with legislative recommendations appropriate to meet such needs, including revisions in the unemployment insurance laws.

(E) The Secretary of the Interior and the Secretary of Commerce are directed to prepare a comprehensive report of (1) United States exports of petroleum products and other energy sources, and (2) foreign investment in production of petroleum products and other energy sources to determine the consistency or lack thereof of the Nation's trade policy and foreign investment policy with domestic energy conservation efforts. Such report shall include recommendations for legislation.

(2) Within 6 months after the date of enactment of this Act:

(A) The Administrator shall develop and submit to the Congress no later than May 15, 1974, a plan for providing incentives for the increased use of public transportation and Federal subsidies for maintained or reduced fares and additional expenses incurred because of increased service for the duration of the Act.

(B) The Administrator shall recommend to the Congress actions to be taken regarding the problem of the siting of energy producing facilities.

(C) The Administrator shall conduct a study of the further development of the hydroelectric power resources of the Nation, including an assessment of present and proposed projects already authorized by Congress and the potential of other hydroelectric power resources, including tidal power and geothermal steam.

(D) The Administrator shall prepare and submit to Congress a plan for encouraging the conversion of coal to crude oil and other liquid and gaseous hydrocarbons.

(E) The Secretary of the Interior shall study methods for accelerating leases of energy resources on public lands including oil and gas leasing onshore and offshore, and geothermal energy leasing.

SEC. 302. REPORTS OF THE PRESIDENT TO CONGRESS.

The President shall report to the Congress every sixty days, beginning April 1, 1974, on the implementation and administration of this Act and the Emergency Petroleum Allocation Act of 1973, together with an assessment of the results attained thereby. Each report shall include specific information, nationally and by region and State, concerning staffing and other administrative arrangements taken to carry out programs under these Acts and may include such recommendations as he deems necessary for amending or extending the authorities granted in this Act or in the Emergency Petroleum Allocation Act of 1973.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the Senate bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the House to the title of the Senate bill, insert the following: "An Act to assure, through energy conservation, end-use rationing of fuels, and other means, that the essential energy needs of the United States are met, and for other purposes."

And the House agree to the same.

HENRY M. JACKSON,
ALAN BIBLE,
LEE METCALF,
JENNINGS RANDOLPH,
EDMUND C. MUSKIE,
HOWARD W. BAKER, JR.,
ERNEST F. HOLLINGS,
ADLAI STEVENSON III,
TED STEVENS,
Managers on the Part of the Senate.

HARLEY O. STAGGERS,
TORBERT H. MACDONALD,
JOHN E. MOSS,
PAUL G. ROGERS,
JAMES T. BROYHILL,
JAMES F. HASTINGS,
Managers on the Part of the House.

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and International contingency plans; to assure the continuation of vital public services; and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendments struck out all of the Senate bill after the enacting clause and inserted a substitute text and provided a new title for the Senate bill.

The committee of conference has agreed to a substitute for both the Senate bill and the House amendment to the text of the bill. Except for clarifying, clerical, and conforming changes, the differences are noted below:

Several general comments should be made concerning the overall pattern of the legislation agreed to by the Conference Committee. The Substitute text agreed to does not contain a number of provisions which were contained in either the House or Senate bill. The Committee wishes to emphasize that it has eliminated these provisions without prejudice. In a number of cases these matters were not agreed to in deference to the jurisdictional prerogatives of other committees of the Congress who were not represented at the Conference. In other cases the Conferees eliminated provisions which in their judgment addressed problems which did not relate to the short term emergency situation. Because of the exigencies of the situation, the Conferees have attempted to confine the scope of this legislation to those matters which were essential and leave to a time which affords more studied consideration those proposals which attempt to deal with the more long term and basic energy supply and demand problems which confront this nation.

Emergency Conservation Regulations

Faced with the emergency situation, on November 8, 1973, the President addressed the nation on the dimensions of the energy crisis. In that address, the President announced that he would request the Congress to vest in him emergency authority to impose restrictions on both the public and private consumption of energy. The legislation which the Conferees have agreed to proposes to give to the Executive a full

spectrum of extraordinary powers to cope with the situation. The Conferees fully expect that the Administration, having been granted these authorities under the Act, will use them forthwith, and take strong action to reduce demand for energy during this period of national energy shortages and to expand supply of petroleum products through the conversion of stationary electric power plants now burning oil or natural gas.

The Conferees have not, however, agreed to vest without limitation the all pervasive and ill defined authority to restrict public and private consumption of energy which had been requested by the President. Instead, the Conferees have devised a mechanism for allowing further legislative consideration and control over the exercise of these powers.

Under its terms, the Administrator of the Federal Emergency Energy Administration created by this legislation would be permitted to issue regulations restricting energy use subject to a reservation of Congressional veto power. This control is to be exercised in a manner which closely parallels statutory mechanisms which have been used in various reorganization acts of the Congress over the past thirty years. The Conferees have carefully tailored this mechanism to take into consideration the emergency circumstances which confront the nation. Thus, the Administrator would be permitted to immediately implement conservation regulations prior to March 15, 1974, in order to reduce demand in the harsh winter months of January and February without delay. Such regulations must be submitted to the Congress simultaneously with their promulgation. Thereafter, the Congress would have an opportunity to veto the regulation by simple resolution in either house. If vetoed, the regulation would not continue in effect. The Committee wishes to emphasize that any such regulation would, until vetoed, be given full force and effect. Compliance may be obtained through court injunctive process or through the imposition of civil and criminal penalties for any violation.

Conservation regulations proposed to take effect after March 15, 1974, would be delayed in their implementation until Congress is afforded an opportunity of 15 consecutive days in continuous legislative session to consider disapproval resolutions. If the Congress does not act within that 15-day period, the regulation may be implemented. Lastly, the Conferees have determined that any conservation measure which is proposed to take effect after August 31, 1974, must be submitted to the Congress in the nature of a legislative proposal for appropriate Congressional consideration. Actions of this nature are sufficiently long term in their objective so as to permit the normal legislative process to be observed.

The law passed since the first declared national emergency in 1933 commonly transferred almost unlimited power to the Executive to permit government to act effectively in times of great crisis. A recently issued report of the Special Committee on the Termination of the National Emergency, United States Senate, catalogued over 470 significant statutes which the Congress has passed since 1933 delegating to the President powers that has been "the prerogatives and responsibility of the Congress since the beginning of the Republic".

Over the course of that 40-year period, the Congress has repeatedly been presented with the problem of finding a means by which a legislative body in a democratic republic may extend extraordinary powers

for use by the Executive during times of emergency without imperiling our Constitutional balance of liberty and authority. The Conferees believe that the disapproval mechanism contained in this legislation provides the best opportunity for resolution of this problem.

The veto authority coupled with a termination date which limits the duration of the period within which these powers may be exercised provides assurance that normal legislative processes will be resumed at a time certain and that the Constitutional checks and balance system will be preserved. It is firmly believed that this form of legislative consideration and control gives full effect to the separation of powers principle so fundamental to our system of government while at the same time allowing a vesting of power in the Executive branch to permit actions to be taken expeditiously in order to respond to immediate and changing circumstances during a crisis situation.

FEDERAL EMERGENCY ENERGY ADMINISTRATION

To exercise the authority granted under this legislation, the Committee has created a temporary Federal Emergency Energy Administration to be directed by an administrator appointed by the President with the advice and consent of the Senate. In addition to its duties under this Act, the Administration is to exercise the authority provided for in the Emergency Petroleum Allocation Act of 1973 previously reported by this Committee and already enacted into law. In so doing the Committee proposes to parallel and give statutory force to the Federal Energy Office created by executive order of the President on Tuesday, December 4, 1973. It is the understanding of the conferees that the office of Administrator came into existence on the effective date of this Act and that vacancies exist in such offices from the time of their creation until they are filled. Accordingly, Article 2, Section 2, Clause 3 of the Constitution is applicable.

The creation of this new administration to deal with the emergency fuels shortages is proposed on the premise that we must focus authority in a single agency head with decisionmaking responsibility for these programs. This agency is to operate within the Executive Department subject to the supervision of the President. Several trappings of independence, however, are given to the Administrator to assure that he may act consonant with the preeminence of his mission free from certain administrative controls which have been ingrafted on agency actions in the name of administrative efficiency. Thus, the Federal Emergency Energy Administration is relieved of the necessity of obtaining prior OMB clearance for information gathering activities. Also to assure that the administration will have high visibility in government, budget requests and legislative recommendations are to be transmitted to the Congress simultaneously with their submission to the Office of Management and Budget. In so doing the Committee seeks to assure that the Congress will know without question or qualification what the Administrator determines to be his fiscal needs in carrying out his legislative assignment and what additional authority may be required to get the job done effectively and expeditiously.

In addition to the powers under the Emergency Petroleum Allocation Act of 1973 and as may be authorized under this Act, the Presi-

dent has proposed to transfer other functions of the Executive Department to a Federal Energy Administration so as to consolidate energy related activities. The Committee has not attempted and does not propose to transfer these functions in this Act. It is understood that some of these proposed transfers, such as the transfer from the Department of Interior of its Office of Oil and Gas and the Outer Continental Shelf authority, require legislative approval. An appropriate bill has been submitted to the Congress and has considered by the Government Operations Committees of the House and Senate. On December 19 the Senate passed the Administration's proposed bill to establish an FEA.

The conferees wish to emphasize that the creation of a temporary Federal Emergency Energy Administration under this Act does not remove the necessity of the Congress acting upon the legislation reported by the House and Senate Government Operations Committees. The need for statutory creation of an administrative office within the Executive Branch which consolidates energy policy related functions of government remains real and immediate. This Act provides the basic authority to initiate the establishment of such an administrative office.

Safeguards Against Unreasonable Discriminations and Unequitable Treatment

The authorities contained in this legislation and in the Emergency Petroleum Allocation Act of 1973, which it amends, call for a major intrusion into the competitive marketplace by the federal government. In allocating fuels so as to maintain essential services during times of shortage and to assure equitable distribution of supplies throughout the nation, decisions will be made which will impact on all regions of the country and all sectors of the economy. Already significant actions have been taken in some cases on questionable legal authority, which have produced dislocations and distortions in the competitive market which have impacted disproportionately on individual groups of competitors offering similar services. In part, this has been the unavoidable result of attempting to cope with a crisis situation without having first developed a decision-making structure which affords government an opportunity to appreciate the full ramifications of its direct and indirect actions. For example, there must be a realization by those in authority that the public good is not served by denying allocations of fuel for certain uses which have the appearance of being nonessential (such as recreational activities or various aspects of general aviation) if to do so would result in significant unemployment and economic recession for some regions of the country. There are, of course, many areas in this nation where recreation and tourism provide the base of the local economy. Careful attention must be given to the needs of these as well as other areas. Moreover, government must equip itself so as to be able to look beyond the immediately affected industry to discover the unforeseen ripple effects of its action on other supportive and relative industry groupings.

Access to adequate supplies of fuels is basic to the survival of virtually every commercial enterprise and, accordingly, government must act with great care to assure that its actions are equitable and do not unreasonably discriminate among users. The Committee has added a separate section to this legislation creating a statutory standard of

reasonableness to be observed in the allocation of refined petroleum products and electrical energy among users or in taking actions which result in restrictions on use of such products and electrical energy. The Committee intends the term equitable to be applied in its broadest and most general sense. As such, the term denotes the spirit of fairness, justness, and right dealing. No user or class of users should be called upon during this shortage period to carry an unreasonably disproportionate share of the burden. This is fundamental to the traditional notion of fairness, and equal protection. The Committee expects the President and the Administrator of the Federal Emergency Energy Administration created under this Act to assidiously observe these requirements in the conduct of their functions.

The Committee also adopted a section which requires the preparation of an economic impact analysis of any actions it proposes to take to bring supply and demand into balance. Wherever practicable, this analysis is to be completed prior to implementation of the proposed action. If conditions do not permit full advance preparation of the economic impact analysis in acting to deal with emergency conditions, the analysis is to be prepared contemporaneously with implementation of any proposed action between date of enactment and March 15, 1974.

The committee is concerned about the very real threat of the cutoff of Canadian fuel to the United States, particularly fuel essential for business and heating purposes. A specific example of such an action is the possibility that the Canadian government may stop supplying fuel to the great Northern Paper and Georgia-Pacific plants in the State of Maine. The following amendment was offered in the conference but was subsequently withdrawn in recognition of the desirability of allowing diplomatic endeavors to be pursued:

"Whenever, as a result of action by the Canadian Resources Board, fuel exports to any manufacturing plant in the United States are interrupted, the Administrator shall make an allocation of fuel to such manufacturing plant in accordance with the provisions of the Emergency Petroleum Allocation Act. Where possible, such allocation shall be from fuel which would otherwise be exported from the United States to Canada."

The committee understands that diplomatic efforts are underway to reverse the actions contemplated by the Canadian government and expresses a strong interest in having all diplomatic avenues pursued vigorously to successfully resolve this and other similar situations.

End Use Rationing Authority

The conferees have agreed on provisions which authorize the President to develop and implement an end use rationing plan for crude oil, residual fuel oil and refined petroleum products. This authority is to be exercised under the Emergency Petroleum Allocation Act of 1973 and must be consistent with the attainment of the congressionally stated objectives of that Act. Procedural protections are provided to permit users an opportunity to present views respecting the development of the plan. It is the firm intention of the conferees that end use rationing be implemented as a last resort measure. Accordingly it has been provided in the conference substitute that end use rationing may

be implemented only upon a finding that all other practicable and authorized actions are insufficient to assure the preservation of public health, safety, and the public welfare and those other defined objectives set forth in section 4(b) of the Emergency Petroleum Allocation Act. Should the President be able to make such a finding, he is authorized to implement end use rationing without further action of the Congress.

The conferees wish to state their intent that in the development of an end use rationing plan, the President shall give special consideration to the transportation needs of our handicapped Americans. Clearly, if the employment, medical, and therapeutic services of our physically handicapped citizens are interrupted as a result of lack of transportation, a hardship for such individuals will be incalculable in its effects. Moreover, the conferees believe that actions taken under the Emergency Petroleum Allocation Act of 1973 shall, where consistent with the objectives of section 4(b) of that Act, give consideration to providing allocations of petroleum products for the timely completion of Federal construction projects and give consideration to the public welfare needs of meeting the educational or housing requirements of our citizens.

The Conferees also recognize that end use rationing plans should give consideration to the personal transportation needs of American military personnel re-assigned to other duty stations and of those persons who are required to relocate for employment purposes.

Prohibition on Inequitable Pricing

During the protracted congressional consideration of S. 2589, the energy emergency and the problems facing the Nation have become acute. One of the most serious and recent aspects of the emergency has been the meteoric increase in crude oil and petroleum product prices. In the last three months of 1973, the cost of residual fuel oil to utilities rose by 150 percent. In December 1973, fuel price increases accounted for 40 percent of the increase in the wholesale price index. Wholesale gasoline prices increased about four cents a gallon in the last three months of 1973. These increases, under present price controls, can be traced directly to two factors: (1) the great increase in the world crude price since October, and (2) the release of certain categories of domestic crude from price controls.

A year ago, crude oil sold for $3.40 a barrel. Today, imported crude and domestic crude not subject to price ceilings sell for $10.35 a barrel and higher. While it is beyond the Committee's jurisdiction to regulate the world price of crude or the price of crude established by international controls, control of domestic prices was considered in order.

It is indisputable that such prices have led to increased drilling activity in the United States, which is clearly desirable if we are to approach domestic self-sufficiency in energy. However, the Committee understands that, according to oil industry and other recent economic supply studies, the long-run market clearing price needed to assure adequate exploration and development and supply is considerably under the $7.09 a barrel national average price for newly produced crude established under section 110 of this act. The Committee there-

fore finds little reason for asking consumers to pay increasingly higher prices, when such prices cannot be justified on the grounds of increasing cost.

For example, total sales volume for the seven major oil companies in the U.S. increased about six percent between the first three quarters of 1973. Total revenues increased by 22 percent, and total net earnings by 46 percent. For this reason, the Committee adopted a section which sets an average ceiling price for crude oil of $5.25, with provisions for higher prices for certain classes of crude, up to an absolute ceiling of 35 percent above the $5.25 average price, or an average of $7.09. Dollar-for-dollar passthroughs of all rollbacks are required to be passed through to the ultimate consumers of residual fuel oil or refined petroleum products, including propane.

The Committee intends, in adopting this section, to strike a just balance between the need for equity and the need for adequate incentives to assure a sufficient long-run supply of domestic fuels.

SHORT TITLE

TABLE OF CONTENTS

Senate bill

The Senate bill provided that it could be cited as the "National Energy Emergency Act of 1973". It had no table of contents.

House amendment

The House amendment provided that it could be cited as the "Energy Emergency Act".

The House amendment also included a table of contents of the legislation.

Conference substitute

The conference substitute has the same short title as the House amendment and includes a table of contents.

TABLE I—ENERGY EMERGENCY AUTHORITIES

FINDINGS AND PURPOSES—ENERGY EMERGENCY

FINDINGS

Senate bill

Under section 101 of the Senate bill the Congress would make a determination that a shortage of crude oil, residual fuel oil, and refined petroleum products does now exist. In addition, it would make determinations with respect to the effect of those shortages; what steps should be taken with respect thereto; that primary responsibility for developing and enforcing fuel shortage contingency plans lies with the States and certain local governments, and that, during the energy emergency the protection and fostering of competition and the prevention of anticompetitive practices and effects are vital.

House amendment

No provision.

Conference substitute

Section 101(a)(1) of the conference substitute is in most respects the same as the Senate bill.

DECLARATION OF EMERGENCY

Senate bill

Under Section 201 the Congress would declare that current and imminent fuel shortages have created a nationwide energy emergency.

House amendment

No provision.

Conference substitute

Section 101(a)(2) of the conference substitute states that on the basis of the determinations specified in paragraph (1) thereof the Congress hereby finds that current and imminent fuel shortages have created a nationwide energy emergency.

PURPOSES

Senate bill

Section 102 of the Senate bill lists the purposes of the legislation. Among the purposes listed are (1) to declare an energy emergency, (2) to direct the President to take action with regard thereto, (3) to provide a national program to conserve scarce energy resources, (4) to minimize the adverse effects of energy shortages on the economy and industrial capacity of the Nation, and (5) to direct the President and State and local governments to develop contingency plans for making specified reductions in energy consumption.

House amendment

Section 101 of the House amendment sets forth the purpose of the legislation which is to (1) call for proposals for measures which could be taken in order to conserve energy, and (2) authorize specific temporary emergency measures to be taken to assure that the Nation's essential needs for fuel will be met in a manner which to the maximum practicable extent meets certain specified objectives.

Conference substitute

Section 101(b) of the conference substitute provides that the purposes of the legislation are to call for proposals for energy emergency rationing and conservation measures and to authorize specific temporary emergency actions to be exercised, subject to congressional review and right of approval or disapproval, to assure that the essential needs of the United States for fuels will be met in a manner which to the fullest extent practicable meets specified objectives.

DEFINITIONS

Senate bill

No provision.

House amendment

Section 102 defined the terms "State", "petroleum product", "United States" and "Administration" for purposes of the legislation.

"Administrator" is defined to mean the Administrator of the Federal Energy Administration which is established by section 104 of the House amendment. The term is used with that meaning throughout the House amendment segments of this joint statement unless another intent is specifically indicated.

Conference substitute

Section 102 of the conference substitute is the same as the House amendment, except that "Administrator" is defined to mean the Administrator of the Federal Energy Emergency Administration which is established by section 103 of the conference substitute. That term will be used with that meaning throughout the conference substitute portions of this joint statement unless another intent is specifically indicated.

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FEDERAL ENERGY EMERGENCY ADMINISTRATION

Senate bill

No provision.

House amendment

Section 104 would establish a Federal Energy Administration. The Administration would be headed by a Federal Energy Administrator appointed by and with the consent of the Senate who would serve until May 15, 1975. The Administrator would be responsible for the development and implementation of Mandatory Allocation Programs provided for in the Emergency Petroleum Allocation Act of 1973.

Copies of budget estimates and requests, legislative recommendations, testimony, or comments on legislation which are submitted to the President or to the Office of Management and Budget would be concurrently transmitted to the Congress. The Administration would be considered an independent regulatory agency for purposes of the collection of information and as such is exempt from Office of Management and Budget veto of its actions for the collection of necessary information.

Conference substitute

Section 103 of the conference substitute establishes until May 15, 1975, unless superseded prior to that date by law a Federal Emergency Energy Administration (FEEA) which shall be temporary and headed by an Administrator who shall be appointed by the President by and with the advice and consent of the Senate.

It is the understanding of the conferees that the office of Administrator comes into existence on the date of enactment of the legislation and that a vacancy exists in such office from the time of its creation until it is filled. Accordingly, Article II, Section 2, Clause 3 of the Constitution is applicable.

Effective on the date on which the Administrator first takes office (or, if later, on January 1, 1974) certain functions, powers, and duties under specified sections of the Emergency Petroleum Allocation Act of 1973 (other than functions vested by section 6 of such Act in the Federal Trade Commission, the Attorney General, or the Antitrust Division of the Department of Justice) are transferred to the Administrator. Personnel, property, records, obligations, and commitments used primarily with respect to functions transferred to the Administrator are also transferred to him.

Whenever the FEEA submits any (1) budget estimate or request, or (2) legislative recommendations or testimony or comments on legislation, to the Office of Management and Budget it must concurrently transmit a copy thereof to the Congress.

The FEEA shall be an independent regulatory agency for purposes of Chapter 35 of Title 44, United States Code, but not for any other purpose.

ENERGY CONSERVATION, DISTRIBUTION, AND ALLOCATION PROVISIONS—RATIONING AUTHORITY

Senate bill

ENERGY RATIONING AND CONSERVATION PROGRAM

Under subsections (a) and (b) of section 203, the President would be required to promulgate a nationwide emergency energy rationing

and conservation program within 15 days after enactment of the legislation. Such program would include (1) a priority system and plan, including a program to be implemented without delay for rationing scarce fuels among distributors and consumers, and (2) measures capable of reducing energy consumption in the affected area by no less than 10% within 10 days, and by no less than 25% within 4 weeks after implementation.

Fuel Distribution Plan

Section 203(c) would require the President within 15 days after enactment of the legislation to determine the fuel needs of the major geographic regions of the United States and to promulgate a plan assuring equitable distribution of available fuel supplies among such regions based on their respective relative needs, including such needs of the States within such regions.

The plan would include allocation of available transport facilities necessary to assure equitable distribution of fuel supplies under the plan.

The fuel distribution plan or plans would be implemented within 30 days after promulgation.

House amendment

Energy Conservation Plans

Section 105 would require the Administrator, within 30 days after enactment of the legislation and from time to time thereafter, to propose one or more energy conservation plans, as defined, to reduce energy consumption to a level which could be supplied from available energy resources. The plans would be submitted to Congress for appropriate action.

Section 105(b) would require such plans to provide for the maintenance of vital services. Section 105(c) would require that proposed restrictions on the use of energy in such plans to be submitted by the Administrator would be designed, to the maximum extent practicable, to be carried out in a manner which is fair and reasonably distributes the burden on all sectors of the economy. Such restriction should also give due consideration to the needs of commercial, retail, and service establishments with unconventional working hours. Section 105(e) would state that no provision of the Act or the EPAA should be construed as authorizing the imposition of any tax.

Amendment to Emergency Petroleum Allocation Act of 1973 (EPAA)

Section 103(a) would amend section 4 of the EPAA, relating to mandatory allocation of crude oil, residual fuel oil, and refined petroleum products.

Proposed subsection 4(h) would authorize the President to establish rules for the ordering of priorities among users of petroleum products and to assign to such users rights to obtain petroleum products in preference to those assigned a lower priority. Prior to this ordering of priorities and assignment of rights, the President must find that such action is necessary in order to carry out the objectives

or subsection 4(b) of the EPAA. (Subsection 4(b) is the section which defines the provisions which must be fulfilled by the regulation providing for the mandatory allocation of petroleum products.)

In the ordering of priorities among users, the maintenance of vital services would be emphasized.

Allocations of products made pursuant to the proposed subsection would be adjusted by the President as necessary to assure that those entitled to receive allotments would actually obtain such allocated products.

The President would be required to establish procedures whereby users may petition for review, reclassification, and modification of priorities and entitlements assigned in accordance with the subsection. These procedures may include procedures with respect to local boards which could be established under section 109(c) of the legislation.

The President would be authorized to require refineries in the United States to adjust their operations with regard to the proportions of products produced in the refining process. These adjustments would be required as necessary to assure that the proportions produced are consistent with the objectives set forth in section 4(b) of the EPAA.

The definition of "allocation" as used in this subsection would be clarified by stating that it "shall not be construed to exclude the end-use allocation of gasoline to individual consumers". Thus, the President would be authorized to ration gasoline.

Section 103(e) would amend section 4 of the EPAA by adding subsections (l) through (n) thereto providing a procedure for Congressional review and disapproval of any rule issued under section 4(h) (which is discussed above) with respect to end-use allocation which is referred to as an "energy action".

Under the procedure, the President would be required to transmit any energy action to both Houses of the Congress on the same day.

An energy action would take effect at the end of the first period of 15 calendar days of continuous session of the Congress after the date on which the energy action is transmitted, unless either House passed a resolution stating that it did not favor the energy action. A detailed disapproval procedure is set out which would be enacted as an exercise of the rulemaking power of each House of Congress. Any energy action which became effective would be printed in the Federal Register.

Proposed section 4(j) of the EPAA would provide that, notwithstanding any other provision of the EPAA, or of any State or local law regarding fuel allocation, provision will be made for adequate supplies of fuels for:

(a) moves of armed services personnel on orders;

(b) household moves related to employment;

(c) household moves rising from displacement due to unemployment; and

(d) moves due to health, educational opportunities, or other good and sufficient reasons.

Conference substitute

End-Use Allocation

Section 104 of the conference substitute amends section 4 of the Emergency Petroleum Allocation Act of 1973 (EPAA) by adding a new subsection (h). This new subsection, agreed to by the conferees on December 20, 1973, authorizes the development and implementation of end use rationing plans for crude oil, residual fuel oil, and refined petroleum products.

Under the new subsection the President may promulgate a rule which shall provide, consistent with the objectives of section 4(b) of that Act, an ordering of priorities among users of crude oil, residual fuel oil, or any refined petroleum product, and for the assignment to such users of rights entitling them to obtain any such oil or product in precedence to other users not similarly entitled. The proposed gasoline rationing plan published for comment by the Federal Energy Office on January 16, 1974 was not reviewed by the conferees. The conference report reflects neither concurrence nor non-concurrence with the Federal Energy Office plan or with any of the provisions thereof.

Such rule shall take effect only if the President finds that, without such rule, all other practicable and authorized methods to limit energy demand will not achieve the objectives of Emergency Petroleum Allocation Act of 1973, and of this Act.

The President shall, by order, in furtherance of such rule cause such adjustments in the allocations made pursuant to the regulation under section 4(b) of the EPAA as may be necessary to provide for the allocation of crude oil, residual fuel oil, or any refined petroleum product as necessary to attain the objectives established for the Allocation Program in the Emergency Petroleum Allocation Act.

The President must provide for procedures by which any user of such oil or product for which priorities and entitlements are established under this new subsection may petition for review and reclassification or modification of any determination made thereunder with respect to his priority or entitlement. Provision is made for the establishment of local boards to administer allocation or rationing programs. In providing for the implementation of rationing the conferees specifically state that no taxing authority, of any type, is granted.

Energy Conservation Regulations

Under section 105 of the conference substitute, the Administrator may propose one or more energy conservation regulations which shall be designed (together with certain other actions) to result in a reduction of energy consumption to a level which can be supplied by available energy resources. The term "energy conservation regulations" is defined to mean limits or such other restrictions on the public or private use of energy (including limitations on operating hours of businesses) which are necessary to reduce energy consumption.

An energy conservation regulation—

(1) may not impose any tax or user fee, or provide for a credit or deduction in computing any tax,

(2) may not provide for taking any action of a kind which may not be taken under this legislation, the Emergency Petroleum Allocation Act of 1973, or the Clean Air Act,

(3) shall apply according to its terms in each State except as otherwise provided in the regulation, and

(4) may not deal with more than one logically consistent subject matter.

An energy conservation regulation may be amended or repealed only in accordance with section 105(b), except that technical or clerical amendments may be made in accordance with section 553 of title 5, United States Code.

Subject to provisions relating to Congressional approval or disapproval, a provision of an energy conservation regulation shall remain in effect for a period specified in the plan but may not remain in effect after May 15, 1975.

The term "energy action" is defined to mean an energy conservation regulation or an amendment (other than a technical or clerical amendment) or repeal of such energy conservation regulation.

The Administrator must transmit any energy action (bearing an identification number) to each House of Congress on the date on which it is promulgated.

If an energy action is transmitted to Congress before March 1, 1974, and provides for an effective date earlier than March 1, 1974, then such action shall take effect on the date provided in the action; but if either House, before the end of the first period of 15 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, passes a resolution stating in substance that that House does not favor the energy action, such action shall cease to be effective on the date of passage of such resolution.

If an energy action is transmitted to Congress and provides for an effective date on or after March 15, 1974 and before September 1, 1974, such action shall take effect in most cases at the end of the first period of 15 calendar days of continuous session of Congress after the date on which the plan is transmitted to it unless, between the date of transmittal and the end of the 15-day period, either House passes a resolution stating in substance that that House does not favor the energy action.

A plan proposed to be made effective on or after September 1, 1974, shall take effect only if approved by Congress by law.

In carrying out the provisions of this legislation, the Administrator must, to the greatest extent practicable, evaluate the potential economic impacts of proposed regulatory and other actions. This would include but not be limited to the preparation of an analysis of the effect of such actions on certain entities and other things which are enumerated.

The Administrator must also develop analyses of the economic impact of various conservation measures on States or significant sectors thereof, considering the impact on both energy for fuel and energy as feed stock for industry. Such analysis shall, wherever possible, be made explicit and to the extent practicable other Federal agencies and agencies of State and local governments which have special knowledge and expertise relevant to the impact of proposed regulatory or other actions shall be consulted in making the analysis, and all Federal agencies shall cooperate with the Administrator in preparing such analyses.

The Administrator, together with the Secretaries of Labor and Commerce, must monitor the economic impact of any energy actions taken by the Administrator, and must provide the Congress with separate reports every thirty days on the impact of the energy shortage and such emergency actions on employment and the economy.

The conferees, taking cognizance of the fact that there are shortages in petrochemical feedstocks, which if not alleviated may cause disruptions of varying degree among many sectors of our economy, have directed the Administrator to exercise such authority as is granted to him under this Act and under any other Act to alleviate such shortages. The conferees are aware that action has been taken under the Economic Stabilization Act to allow an increase in the price of petrochemical feedstocks in an effort to increase their supply. However, it is the intent of the conferees, in directing the Administrator to exercise the authorities conferred on him, to require that he take such other and additional steps as are necessary to increase the supply and availability of petrochemical feedstocks. Within 30 days from the date of enactment of this Act the Administrator is also directed to report to the Congress with respect to the shortages of petrochemical feedstocks and with respect to such additional steps as have been taken to alleviate such shortages.

Under section 105(b)(3)(A), the conference committee substituted new dates to grant the Administrator immediate authority and time so that it can establish and implement a system subject to congressional veto for the purpose of alleviating the panic-buying now taking place at the retail level. In this regard, special note was made of the success achieved under State programs adopted by the States of Hawaii, Oregon and Massachusetts to manage sales of gasoline at the pump.

The conferees urge the Administrator, in fashioning any energy conservation plan to deal with this problem, to consider preserving State programs for control of gasoline sales which are shown to be workable and which are not inconsistent with this Act.

COAL CONVERSION AND ALLOCATION

Senate bill

Section 204(a) would authorize the President to require that any major fossil fuel burning installation (including existing electric generating plants) which has the ready capability and necessary plant equipment to burn coal or other fuels, convert to burning coal or other fuels as its primary energy source. Any installation so converted could be permitted to use such fuel for more than one year, subject to the provisions of the Clean Air Act. To the extent practicable, plant conversions would first be required where the use of coal would have the least adverse environmental impact. Such conversions would be contingent on the availability of coal and reliability of service.

The President would require that fossil fuel fired electrical powerplants now being planned be designed and constructed so as to have capability of rapid conversion to burn coal.

The President could require that certain fossil fuel fired baseload powerplants (other than combustion turbine and combined cycle units) now being planned be designed and constructed so to be capable of rapid conversion to burn coal.

House amendment

The provisions of section 106 of the House amendment are in most respects the same as in the Senate bill with the following exceptions:

(1) Under the House amendment the powers and duties are vested in the Administrator of the Federal Energy Administration rather than the President.

(2) Any installation limited to burning coal as its primary energy source under the legislation or which converted to the use of coal after beginning such conversion within 90 days before the effective date of the legislation could continue to use coal until January 1, 1980, if the Administrator of the EPA approves a plan submitted by the operator of such installation after notice to interested persons and opportunity for presentation of views. The plan would have to meet requirements spelled out in section 106 (b) (1).

(3) The Administrator of EPA or a State or local agency could, after notice to interested persons and an opportunity for presentation of views, (A) prohibit any such installation from using coal if it determines that such use is likely to materially contribute to a significant risk to public health, or (B) require any such installation to use a particular type and grade of coal if such coal is available.

(4) The Administrator would be authorized to prescribe a system for allocation of coal.

Conference substitute

Section 106 of the conference substitute provides that the Administrator shall, to the extent practicable and consistent with the objectives of this Act, by order, after balancing on a plant-by-plant basis the environmental effects of use of coal against the need to fulfill the purposes of this legislation, prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this legislation, has the capability and necessary plant equipment to burn coal. Any installation to which such an order applies is permitted to continue to use coal and coal by-products as provided in section 119(b) of the Clean Air Act. To the extent coal supplies are limited to less than the aggregate amount of coal supplies which may be necessary to satisfy the requirements of those installations which can be expected to use coal (including installations to which orders may apply under this subsection), the Administrator shall prohibit the use of natural gas and petroleum products for those installations where the use of coal will have the least adverse environmental impact. A prohibition on use of natural gas and petroleum products hereunder is contingent upon the availability of coal, coal transportation facilities, and the maintenance of reliability of service in a given service area. Assessment of the availability of coal would take into consideration the physical and economic feasibility of its production, transportation to the powerplant, and any of state laws or policies limiting its extraction or use.

The administrator must require that fossil-fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable of using coal as a primary energy source instead of or in addi-

tion to other fossil fuels. No fossil-fuel-fired electric powerplant is required to be so designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) if an adequate and reliable supply of coal is not available and is not expected to be available. In considering whether to impose a design or construction requirement, the Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

The Administrator is authorized by rule to prescribe a system for allocation of coal to users thereof in order to attain the objectives specified in this section.

MATERIALS ALLOCATION

Senate bill

The first paragraph of section 313 would authorize the President to allocate supplies of materials, equipment, and fuel associated with exploration, production, refining, and required transportation of energy supplies to maintain and increase the production of coal, crude oil, natural gas, and other fuels.

Under section 606 the President would be authorized to allocate residual fuel oil and refined petroleum products for the maintenance of exploration for, and production or extraction and processing of, minerals, and for transportation related thereto.

House amendment

Section 103(b) would amend section 4(b) of the EPAA to provide for such allocation for maintenance of exploration for, and production or extraction of fuels and minerals essential to the requirements of the United States, and for required transportation related thereto.

Section 210 would allow the formulation of rules to provide the necessary fuels for all operations of any project or enterprise authorized by the Federal Government.

Conference substitute

Under section 107(a) of the conference substitute, the Administrator must within 30 days after enactment of the legislation propose and publish a contingency plan for allocation of supplies of materials and equipment necessary for exploration, production, refining, and required transportation of energy supplies and for the construction and maintenance of energy facilities. When he finds it necessary to put all or part of the plan into effect, he must transmit the plan or portion thereof to Congress and such plan or portion thereof shall take effect in the same manner as an energy conservation plan prescribed under section 105.

Section 107(b) of the conference substitute is the same as section 103(b) of the House amendment which is described above.

FEDERAL ACTIONS TO INCREASE AVAILABLE DOMESTIC PETROLEUM SUPPLIES

Senate bill

Section 207 would authorize the President—

(a) to require that existing domestic oil fields produce at their maximum efficient rate (MER). MER is a level of production

fixed by State agency regulation at which it is estimated that production can be sustained without detriment to the ultimate recovery;

(b) to require certain designated oilfields, on lands in which there is a Federal interest, to produce in excess of their maximum efficient rate. Such fields would be those in which production in excess of their currently assigned maximum efficient rate would not result in excessive risk of losses of recovery;

(c) to require adjustment of product mix in domestic refinery operations, in accordance with national needs and priorities; and

(d) to order acceleration of oil and gas leasing programs, both onshore and offshore, and for geothermal leasing. Such an accelerated program would be subject to the provisions of all existing laws, including the National Environmental Policy Act.

House amendment

Section 103(a) would add a new section 4(h)(4) to the EPAA which would vest the President with the same authority with respect to refineries as provided in section 207(c) of the Senate bill.

Section 103(a) would also add new section 4(i) to the EPAA. This new section would authorize the President to require the production of crude oil at the MER. He would consult with the Department of the Interior and with State governments in order to determine which producers shall be so required. The MER would be as determined by the State in which the field is located. However, after consultation with such State or with the Department of the Interior, the President may set a higher rate if he determines that in doing so the ultimate recovery of crude oil and natural gas is not unreasonably impaired.

Existing and future development plans for the production of crude oil on Federal lands would include or be amended to include provisions for the secondary recovery and, insofar as possible, the tertiary recovery of crude oil before the well was abandoned.

Conference substitute

Section 108(a) of the conference substitute is substantially the same as the provisions of the Senate bill described above, except that section 108 vests the authority in the Administrator of FEEA rather than the President, and the provisions for accelerated leasing programs are not included.

Section 108(b) of the conference substitute provides that nothing in this section shall be construed to authorize the production of any Naval Petroleum Reserve now subject to chapter 641 of title 10 of the U.S.C.

OTHER AMENDMENT TO THE EMERGENCY PETROLEUM ALLOCATION ACT OF 1973

Senate bill

No provision.

House amendment

Section 103(a) of the House amendment would have added a new subsection (l) to section 4 of the Emergency Petroleum Allocation Act. Such new subsection would require that, if any allocation of residual fuel oil or refined petroleum products under section 4(a) of the EPAA is based on the amount used or supplied during a historical

period, adjustments could be made reflecting regional disparities in use, or unusual factors influencing use, in the historical period. This subsection would take effect 30 days after enactment of the legislation.

Section 103(c) would amend section 4(c)(3) of the EPAA to direct the President, when requiring adjustments in allocations, to take into account lessened use of crude oil, residual fuel oil, and refined petroleum products prior to enactment as a result of an unusual regional climatic variations.

Section 103(d) would amend section 4(g)(1) of the EPAA to change the termination date in each case to May 15, 1975.

Conference substitute

Section 109 of the conference substitute is the same as the House amendment, except that—

(1) the new subsection which would be added to section 4 of the EPAA would be designated as subsection (i),

(2) population growth and unusual changes in climatic conditions are added as factors on which adjustments under the subsection can be based, and such adjustments to reflect population growth will be based on the most current figures available from the Bureau of the Census, and

(3) a specific provision has been added so that adjustments under the subsection shall take effect no later than 6 months after the date of enactment of the legislation.

(4) the amendment to section 4(c)(3) is omitted.

PROHIBITION ON INEQUITABLE PRICING

Senate bill

No provision.

House amendment

Section 117 amended the Emergency Petroleum Allocation Act to require the President to set prices for crude oil, residual fuel oil and refined petroleum products at such a level as to prevent windfall profits to sellers. If, upon petition by an interested party, the Renegotiation Board (established by section 107(a) of the Renegotiation Act of 1951) determines that a price permits windfall profits, the Board may specify a price which does not result in such profits, and may order the refund to purchases of an amount equal to the windfall profits gained.

For the purposes of this section, windfall profits were defined as either profits in excess of a reasonable profit with respect to the particular seller, considering volume of production, net worth, risk, efficiency, etc.; or, the average profit for the firm or the industry in the period 1967 through 1971.

Conference substitute

The conference substitute rewrites the provisions of the House amendment. The House amendment included provisions designed to prohibit windfall profits-price gouging. The thrust of these provisions was to provide pricing protection for industrial and individual consumers of petroleum products. Under its terms, the President was *directed* to exercise his pricing authority under the Economic Stabilization Act of 1970 and the Emergency Petroleum Allocation Act of 1973 to specify prices for crude oil, residual fuel oil, and refined pe-

troleum products to prevent windfall profits and price gouging by sellers. This was to be accomplished by specifically directing the President to establish prices which avoid windfall profits; by providing a procedure before the Renegotiation Board by which interested persons could obtain review of established prices and, in certain events, a rollback of such prices; and by including procedures permitting consumers to force individual companies to return windfall profits resulting from excessive prices. These provisions were incorporated in the House amendment out of a sense of dissatisfaction with the lack of limitations in existing law on the exercise of the President's pricing authority. This situation had permitted the President to adopt pricing policies which were producing unreasonably high profits for persons engaged in the petroleum industry in what a majority of House members believed to be a misdirected effort to allow the prices for short supplies to rise to levels which would discourage demand. The Senate bill contained no specific control on the exercise of the President's pricing authority similar to that of the House amendment.

The Conference substitute has shifted the emphasis away from a concentration on the profits produced by such prices to instead concentrate on the reasonableness of the levels of such prices. Here the conferees have refined the direction to the President to specifically require that the President specify equitable prices for domestic crude oil, all residual oil, and all refined petroleum products. This section further provides that, within 30 days after enactment of this Act, the ceiling price for all crude oil be the price for that grade of oil in that field at 6:00 a.m., May 15, 1973, plus $1.35. On a national average basis, this new price would be approximately $5.25. If this new price results in a rollback, as it would for oil not now subject to price controls, any such savings must be passed on to the ultimate consumers of residual oil or refined petroleum products, on a dollar-for-dollar passthrough, in an equitable and proportional manner among the consumers of different products.

Such proportional distribution of the passthrough shall be established on the basis of historical sales, using as the base period 1972, the same as that set out under the Emergency Petroleum Allocation Act.

For certain classes of crude, the President may establish a ceiling price up to 35 percent above the general ceiling price, upon transmittal to Congress of an explanation thereof and justification therefor.

Categories which the conferees envision could be granted a ceiling price above the average ceiling price of 5.25, would be crude oil produced from stripper wells, oil produced by secondary or tertiary recovery, and other sources of crude which require higher prices to permit recovery of costs and to provide additional incentives to maintain production and stimulate new development.

With certain exceptions, the conference substitute provides that in making any future change in the regulation which establishes a price or method for determining the price of crude oil, residual fuel oil, and refined petroleum products, the President shall afford interested persons an opportunity of not less than 10 days to present oral and written views on the proposed change. In certain crucial circumstances, the President is entitled to waive the 10 day comment period and make price changes immediately effective. It is the express and deliberate intent of the conferees, however, that such waivers occur in only emergency circumstances and that even in such an event the President

would be directed to afford an opportunity of comment following implementation of the amendment to the regulation.

Morever, in addition to the procedural protections provided in this section the conference substitute has incorporated separate procedures governing the judicial review of amendments to the pricing regulation.

Section 110 also provides for procedure whereby persons may petition the President to obtain administrative review of prices established by regulation.

PROTECTION OF FRANCHISED DEALERS

Senate bill

Section 607 would provide for protection of franchised dealers. The term "franchise" would mean any agreement or contract between a refiner or a distributor and a retailer or between a refiner and a distributor, as these terms were defined by the section. A refiner or distributor was prohibited from terminating a franchise unless he furnished prior notification to each affected distributor or retailer in writing by certified mail not less than 90 days prior to the date on which such franchise would be canceled. Such notification must contain a statement of intention to terminate with the reasons therefor, the date on which such action would take effect, and a statement of the remedy or remedies available to such distributor or retailer. This franchise could not be terminated by the refiner or distributor unless the affected retailer or distributor failed to comply substantially with any essential and reasonable requirement of such franchise or failed to act in good faith in carrying out its terms, or unless such refiner or distributor withdrew entirely from the sale of petroleum products in commerce for sale other than resale in the United States.

A retailer with a franchise agreement could bring suit against a distributor or refiner whose actions affected commerce and who has engaged in conduct prohibited by this section. Similarly, a distributor could bring suit against a refiner. Such suits could be brought in a United States district court if commenced within three years after the cancellation, failure to renew, or termination of a franchise. The district court was empowered to grant the necessary equitable relief including declaratory judgment and injunctive relief. The court could grant an award for actual and punitive damages as well as reasonable attorney and expert witness fees.

House amendment

Section 113 amended the Emergency Petroleum Allocation Act of 1973 to provide for fair marketing of petroleum products. Certain terms were defined, including "commerce" to mean commerce between a state and a point outside such state; "marketing agreement" to mean a specified portion of an agreement or contract between a refiner and a branded independent marketer.

The notice and termination requirements would be the same as those in the Senate bill except that termination could not be made for withdrawal from the market unless the refiner did not for three years after termination engage in the sale of petroleum products in the same relevant market area within which the terminated marketer operated. Another difference required a terminated marketer to bring suit in district court against a refiner within four years after the date of termination of such marketing agreement.

Conference substitute

Section 111 of the conference substitute is the same as the Senate bill, except that—

(1) the terms "distributor", "refiner" and "retailer" are defined in terms of a *person* engaged in certain acts, rather than in terms of an *oil company* engaged in certain acts as in the Senate bill, and

(2) in the case of an action for failure to renew a franchise, damages would be limited to actual damages including the value of the dealer's equity. The provisions of this section shall expire with the expiration of the Act, except for pending actions or proceedings, or claims based on actions prior to that expiration date.

PROHIBITIONS ON UNREASONABLE ACTIONS

Senate bill

No provision.

House amendment

Section 115 provides that actions taken under the legislation, the Emergency Petroleum Allocation Act of 1973, or other Federal law resulting in allocation or restriction on the use of refined petroleum products and electrical energy must be equitable and not arbitrary or capricious or unreasonably discriminate among users.

In the case of allocations of petroleum products applicable to foreign commerce no foreign entity would receive more favorable treatment than that which is accorded by its home country to U.S. citizens in the same line of commerce. Allocations would include provisions designed to foster reciprocal and nondiscriminatory treatment by foreign countries of U.S. citizens engaged in foreign commerce.

Section 105(c) would provide that, to the maximum extent practicable, restrictions on the use of energy shall be designed to be carcied out in such manner so as to be fair and to create a reasonable distribution of the burden on all sectors of the economy, without imposing an unreasonably disproportionate share on any specific industry, business, or commercial enterprise, and shall give due consideration to the needs of commercial, retail, and service establishments with unconventional working hours.

Conference substitute

Section 112 of the conference substitute is the same as the House amendment except that section 112(a) refers to allocation of petroleum products and electrical energy among classes of users. Section 112(b) incorporates the provisions of section 105(c) of the House amendment.

It is the intent of the conferees that foreign corporations be accorded treatment under allocation programs comparable to that accorded United States corporations which operate in their respective countries of origin or incorporation. The President is granted discretion to waive this provision if he determines its strict application would be contrary to the purposes of the Act, and publishes his finding to that effect in the Federal Register. Examples might be allocation of fuels for activities such as petroleum exploration and development, or construction of pipelines or refineries in the United States, by a foreign corporation to serve United States needs, or the use of

allocation authority as an economic bargaining tool with foreign nations.

REGULATED CARRIERS

Senate bill

Under section 204(b)(1), the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission with respect to certain carriers which they regulate could make reasonable and necessary adjustments in the operating authority of such carriers in order to conserve fuel.

Section 204(b)(2) would require each of these agencies to report to the appropriate Committees of Congress within 15 days after enactment of the legislation on the need for additional regulatory authority to conserve fuel.

House amendment

Sections 107(a) and 107(d) of the House amendment are substantially the same as the provisions of the Senate bill described above, except that the reports of the ICC, CAB, and FMC would not have to be submitted until 60 days after the date of enactment of the legislation.

In addition, section 107(b) would require the ICC to eliminate restrictions on the operating authority of any motor common carrier of property which require excessive travel between points. This would be done without disrupting essential service to communities served by any such carrier.

Section 107(c) would require the ICC to adopt rules which contribute to conserving energy by eliminating discrimination against the shipment of recyclable materials in rate structures and Commission practices.

Conference substitute

Section 113 of the conference substitute is the same as the House amendment with two exceptions. The reports of the ICC, CAB, and FMC must be submitted within 45 days after enactment and section 107(c) of the House amendment is deleted.

ANTITRUST LAWS

Senate bill

Under section 314, the President would develop plans of action and could authorize voluntary agreements which are necessary to achieve the purposes of the legislation. In addition, the President could provide for the establishment of interagency committees and advisory committees.

Advisory committees would be subject to the Federal Advisory Committee Act of 1972 and would be chaired by a regular full-time Federal employee.

An appropriate representative of the Federal Government would attend each meeting of any advisory committee or interagency committee established under the legislation. The Attorney General and the Federal Trade Commission would be given advance notice of any meeting and could have an official representative attend and participate in any such meeting.

A verbatim transcript would be kept of all advisory committee meetings, and subject to existing law concerning the national security and proprietary information, would be deposited together with any agreement resulting therefrom with the Attorney General and the Federal Trade Commission. The transcript would be available for public inspection.

The Attorney General and the Federal Trade Commission would participate in the preparation of any plans of action or voluntary agreement and could propose any alternative which would avoid, to the greatest extent practicable, any anticompetitive effects while achieving the purposes of the legislation. They would also review, amend, modify, disapprove or prospectively revoke any plan of action or voluntary agreement which they determined was contrary to the purposes of section 314 or not necessary to achieve the purposes of the legislation.

If necessary to achieve the purposes of the legislation, owners, directors, officers, agents, employees, or representatives of two or more persons engaged in the business of producing, transporting, refining, marketing, or distributing crude oil or any petroleum product would meet, confer, or communicate in accordance with the provisions of section 314 and solely to achieve the objectives of the legislation. In those instances, such persons would have a defense against any civil or criminal action brought under the antitrust laws.

The Attorney General would be granted authority to exempt certain meetings, conferences, or communications from being chaired by a regular full-time Federal employee or from the requirement that a verbatim transcript be kept, deposited with the Attorney General and Federal Trade Commission and made available for public inspection.

The President could delegate the functions of developing plans of action, authorizing voluntary agreements, and providing for the establishment of interagency committees and advisory committees.

Section 708 of the Defense Production Act of 1950 would not apply to any action taken under this legislation or the Emergency Petroleum Allocation Act of 1973. The provisions of section 314 would apply to the latter Act, notwithstanding any inconsistent provisions of section 6(c) thereof.

There would be a defense available to any civil or criminal action brought under the antitrust laws arising from any course of action, meeting, conference, communication or agreement which was held or made in compliance with the provision of this section.

The Attorney General and the Federal Trade Commission would be responsible for monitoring any plan of action, voluntary agreement, regulation, or order approved under section 314 to prevent anticompetitive practices and promote competition.

The Attorney General and the Federal Trade Commission would promulgate joint regulations concerning maintenance of documents, minutes, transcripts, and other records relating to the implementation of any plan of action, voluntary agreement, regulation, or order approved under the legislation. Persons involved in any such implementation would be required to maintain the record required by any such joint regulation and make them available for inspection by the Attorney General and the Federal Trade Commission at reasonable times on reasonable notice.

Actions taken by the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission under section 204(b)(1) would not have as their principal purpose or effect the substantial lessening of competition among the carriers affected. Actions taken under that section would be taken only after providing an opportunity for participation to the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division.

House amendment

The provisions of section 120 are similar to the provisions in the Senate bill described immediately above. However, the following differences should be noted:

The House version vests various powers and duties in the Administrator of the Federal Energy Administration. In the Senate version powers and duties were vested in the President.

The House version requires that advisory committees include representatives of the public and be open to the public.

The Administrator, subject to the approval of the Attorney General and the Federal Trade Commission would by rule promulgate standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing crude oil, residual fuel oil, or any refined petroleum product could develop and implement voluntary agreements and plans of action to carry out such agreements which the Administrator determines are necessary to accomplish the objectives of section 4(b) of the EPAA. Such standards and procedures would be promulgated under the section 553 of title 5, United States Code. Several standards and procedures are set forth and required by the legislation.

The Federal Trade Commission instead of the Attorney General could exempt types or classes of meetings, conferences, or communications from the requirement that a verbatim transcript be kept and deposited with the Attorney General and Federal Trade Commission and made available for public inspection and copying.

Any voluntary agreement or plan of action entered into under the section would have to be submitted in writing to the Attorney General and the Federal Trade Commission 20 days before being implemented and would be available for public inspection and copying.

The Attorney General and the Federal Trade Commission could each prescribe rules and regulations necessary or appropriate to carry out their responsibilities under the legislation.

The Attorney General and the Federal Trade Commission would each submit to the Congress and the President at least once every 6 months a report on the impact on completion and on small business of actions authorized by section 120.

The authority granted under section 120 and any immunity from the antitrust laws thereunder would terminate on December 31, 1974.

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RETAIL AND SERVICE ESTABLISHMENTS—VOLUNTARY ENERGY CONSERVATION AGREEMENTS

Section 114 of the House amendment would provide that within fifteen days of enactment of the legislation, the Administrator, in consultation with the Attorney General and the Federal Trade Commission, would promulgate standards and procedures for retail or service establishments to enter into voluntary agreements to limit operating hours, adjust retail-store delivery schedules and take such other action as the Administrator, after consultation with the Attorney General and the Federal Trade Commission, determines to be necessary and appropriate to accomplish the objectives of this Act.

Such standards and procedures would be promulgated pursuant to section 553 of title 5 of the United States Code. Among these standards and procedures would be provision for the filing of a copy of any agreement with the Attorney General and the Federal Trade Commission, which would be available for public inspection. Meetings held to develop and implement a voluntary agreement could be attended by interested persons, who would be afforded opportunity to make oral and written presentations, and such meetings shall be preceded by timely notice to the Attorney General, the Federal Trade Commission and be available for public in the affected community. A summary of such meeting, along with any written presentation of interested persons, would be submitted to the Attorney General and the Federal Trade Commission and be available for public inspection. Actions in good faith which are taken by firms in conformity with this section to develop and implement a voluntary energy conservation agreement shall not be construed to be within the prohibitions of the antitrust laws of the United States, the Federal Trade Commission Act or similar State statutes.

Any voluntary agreement entered into under this section would be submitted to the Attorney General 10 days before being implemented. The Attorney General at any time on his own motion or upon request of any interested person could disapprove any voluntary agreement under section 114 and thereby withdraw prospectively any immunity from the antitrust laws.

No voluntary agreement under this section would pertain to activities relating to marketing and distribution of crude oil, residual fuel oil or refined petroleum products, which are matters dealt with under section 120. Also, this section is limited to those voluntary agreements in which all members have 75 per cent of their annual sales not for resale and recognized as retail in the particular industry, as determined by the Attorney General.

The Attorney General and the Federal Trade Commission would be required to submit to Congress and the President at least once every six months a report on the impact on competition and on small business of agreements authorized by this section.

Conference substitute

Section 114 of the conference substitute is the same as section 120 of the House amendment, except that the authority granted and any immunity from the antitrust laws thereunder would terminate on May 15, 1975.

70

EXPORTS

Senate bill

Subsection (e) of section 207 authorized the President to limit the export of gasoline, number 2 fuel oil, residual fuel oil, or any other petroleum product, pursuant to the Export Administration Act of 1969, to achieve the purposes of the Act.

House amendment

To the extent necessary to carry out the purposes of the Act, section 123 authorized the Administrator by rule to restrict exports of coal, petroleum products, and petrochemical feedstocks, under such terms as he deems appropriate. He must restrict exports of such commodities if the Secretary of Commerce or the Secretary of Labor certified that such exports would contribute to unemployment in the United States. The Administrator could use, but was not limited to, existing statutes such as the Export Administration Act of 1969. Rules should take into account the historical trading relations with Canada and Mexico and should not be inconsistent with section 4(b) and (d) of the Environmental Protection Agency Act.

Conference substitute

Section 115 of the conference substitute follows the provisions of the House amendment. The authority of the Administrator to set appropriate terms for the restriction of exports of coal, petroleum products, and petrochemical feedstocks and the requirement that he do so upon certification by the Secretary of Commerce or the Secretary of Labor is the same as in section 123 of the House amendment.

In addition, the Secretary of Commerce, pursuant to the Export Administration Act of 1969 may restrict the exports of coal, petroleum products, and petrochemical feedstocks, and of materials and equipment essential to the production, transport, or processing of fuels to the extent necessary to carry out the purpose of this legislation and sections 4(b) and 4(d) of the Emergency Petroleum Allocation Act of 1973. If the Administrator certifies to the Secretary of Commerce that export restrictions of such commodities are necessary to carry out the purposes of this legislation, the Secretary of Commerce shall impose such export restrictions. The requirements for rules in the House amendment are also applied to actions taken by the Secretary of Commerce under the Export Administration Act of 1969.

The Committee has confined the export control authority to petrochemical feedstocks, coal, and petroleum products which are subject to allocation under the Emergency Petroleum Allocation Act of 1973. In using the term "petrochemical feedstocks" the Committee intends to identify the basic hydrocarbon derivatives of crude oil such as propane, butane, naphtha, olefins such as ethylene and propylene, aromatics such as benzene, toluene and the xylenes, extender oil used in the manufacture of rubber, and aromatic oils used in the manufacture of carbon black.

The Committee has vested separate authority in both the Administrator and the Secretary of Commerce in connection with the administration of the Export Administration Act. This will insure that the essential needs of American consumers will be met and that private enterprises will not be permitted to export energy in a manner not in accord with the national interest.

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EMPLOYMENT IMPACT AND WORKER ASSISTANCE

Senate bill

Section 208 would direct the President to take into consideration and minimize, to the fullest extent practicable, any adverse impact of actions taken under this Act upon employment. All government agencies would be directed to cooperate fully to minimize any such adverse impact.

Section 501 would direct the President to make grants to states to provide unemployment assistance to individuals as he deemed appropriate during the individual's unemployment. The individual must be not otherwise eligible for unemployment compensation or have exhausted his eligibility for it. There is a two-year limitation on the eligibility for such assistance and a limitation on the amount.

This section would also authorize the President to prescribe terms and conditions for the distribution of food stamps through the Secretary of Agriculture pursuant to the provisions of the Food Stamp Act of 1964, as amended, for so long as he determined necessary. The Secretary of Labor would be directed to provide reemployment assistance services under other laws to any unemployed individual, including assistance to relocate in another area where employment was available.

The President would be directed, acting through the Small Business Administration, to make loans to aid in financing domestic projects required by the Administration for administration or enforcement of the Act for approved private and public applicants. The President would determine the terms and conditions of such financial assistance subject to stated exceptions.

The authorization of such appropriations as might be necessary to carry out the provisions of this section would be included. The Secretary of Labor must report to Congress on the implementation of this section no later than six months after enactment and annually thereafter. The report must include an estimate of the funds necessary in each of the succeeding three years.

House amendment

Section 122 included provisions very similar to those in the Senate bill except that the distribution of food stamps and reemployment assistance and Small Business loans would not be provided for. Also, the President was required to report to Congress within 60 days of enactment on the present and prospective impact of energy shortages upon employment, the adequacy of existing programs to deal with such impact, and recommendations for legislation needed to adequately meet the needs of adversely affected workers.

Conference substitute

Section 116 of the Conference report provides for grants to be made to the States to enable them to extend the coverage of their unemployment compensation to persons adversely affected by the implementation of this Act as well as those directly and adversely affected by energy allocations, energy shortages, energy conservation measures and changes in consumption patterns as a result of the energy emergency. Such coverage would be available beyond the duration provided ordinarily under State law, and would extend to persons not otherwise

covered by unemployment insurance programs, up to a period not to exceed one year. In adopting this provision, the Conferees recognized that energy-related unemployment will be severe in the coming months—perhaps reaching recessionary levels—and will touch virtually all sectors of the economy.

The Committee believes that, at a time when the American people are being asked to bear the burden of the shortage, the government should also act to provide programs to assist persons and families who face hardships as a result of unemployment caused by the energy shortage.

The authorization for this section is limited to $500,000,000 each year.

The conferees wish to make some specific notations of their understanding of how this section is to operate. It is to be emphasized that this action requires the President to make grants to the states to provide unemployment compensation for persons who have exhausted their state rights to unemployment compensation and for others engaged in classes of employment not otherwise entitled to unemployment compensation under state programs. In giving rule making authority to the President to govern the issuance of such grants, the conferees intend that the President exercise that authority to define the nature of the criteria or formula pursuant to which states receive grants-in-aid under this section. Within the dimensions of the assistance program as established by the President's regulations, the state is to administer the program. Grants to the states may include reimbursement for the costs of administration of this program. It is also to be emphasized that the states are to determine whether the unemployment is attributable to the energy crisis and may also determine whether an unemployed person continues to be eligible for compensation under this section.

USE OF CARPOOLS AND GOVERNMENT MOTOR VEHICLES

Senate bill

Section 605 directs the Secretary of Transportation to encourage the creation and expansion of the use of carpools and to establish within DOT an Office of Carpool Promotion and authorizes an appropriation of $25,000,000 for the conduct of programs to promote carpools. Appropriated funds would be allocated to State and local governments in fixed proportions to carry out the promotion of carpooling. The Secretary would make a report to the Congress within one year after enactment of the legislation on his activities and expenditures under section 605.

Section 603 would generally preclude the use of funds for passenger motor vehicles or to pay the salaries of drivers of such vehicles unless they are operated out of carpools.

This would not apply to vehicles for the use of the President and one each for the Chief Justice, members of the President's Cabinet, and the elected leaders of Congress, or to vehicles operated to provide regularly scheduled service on a fixed route.

House amendment

Section 116(a)–(f) of the House amendment is generally the same as the provisions of section 605 of the Senate bill with respect to car-

pools, except that only $1 million is authorized to carry out the provisions of the section. Section 116(g) would define local governments and local units of government.

The President under section 116(h) would be required to take action to require all agencies of the Government, where practicable, to use economy model motor vehicles.

Section 116(h) would also specify the number of "fuel inefficient" motor vehicles which could be purchased for the Federal Government in fiscal years 1975 and 1976.

Section 116(i) would direct the President to take action to prevent with specified exceptions any officer or employee in the Executive Branch below the rank of Cabinet officer from being furnished a limousine for his individual use.

Conference substitute

Section 117 (a) through (h) of the conference substitute is the same as section 116 (a) through (h) of the House amendment with two exceptions. The sum of $5 million, not $1 million, is authorized to be appropriated for the conduct of programs to promote carpools, such authorization to remain available for two years. Also, the provisions in section 116(h) of the House amendment on government motor vehicles specifying the number of "fuel inefficient" motor vehicles which could be purchased has been deleted. With regard to the use of limousines by Federal officials, the conferees adopted language from both the Senate and House provisions. The report provides among other things that no funds be expended for chauffeurs for individual use by government officials.

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

Senate bill

Section 311(a) would waive the more time-consuming procedures of the Administrative Procedure Act, notably the requirements of adjudicatory hearings according to section 554 of title 5, United States Code, which could otherwise apply to functions exercised under the Act. However, the requirements of sections 552, 553 (as modified by section 311(b) of the Act), 555 (c) and (e), and 702 would apply to such functions.

Section 311(b) would require that all rules, regulations, or orders promulgated pursuant to the Act be subject to the provisions of section 553 of title 5, United States Code, with the following exceptions: (1) Notice and opportunity to comment (a minimum of five days) by publication in the Federal Register on all proposed general rules, regulations or orders (this requirement could be waived upon a finding that strict compliance would cause grievous injury); (2) public notice of State rules, regulations, or orders promulgated pursuant to section 203 of the Act by widespread publication in newspapers of statewide circulation, and (3) public hearings on those rules, regulations, or orders issued by authorized agencies and determined to have substantial impact, to be held prior to implementation to the maximum extent practicable and no later than sixty days following implementation.

Section 311(c)(1) would require, in addition to the requirements of section 552 of title 5, United States Code, any agency authorized to issue rules or orders to make available to the public all internal rules and guidelines upon which they are based, modified as necessary to insure confidentiality protected under such section 552. Such agency must publish written opinions on any grant or denial of a petition requesting exemption or exception within thirty days with appropriate modifications to insure confidentiality.

Authorized agencies would also be required to make adjustments to prevent hardships and establish procedures available to any person making appropriate requests.

Section 311(d) would require the President's proposals submitted pursuant to section 301 of the Act to include findings of fact and explanation of the rationale for each provision, proposed procedures for the removal of restrictions imposed, and a schedule for implementing the provisions of section 552 of title 5, United States Code.

Section 312 contained judicial review provisions. National programs required by the Act and regulations establishing such national programs could be challenged only in the United States Court of Appeals for the District of Columbia within 30 days of the promulgation of the regulations. Programs and regulations of general, not national, applicability (to a State, or several States, or portions thereof) could be challenged only in the United States Court of Appeals for the appropriate circuit within 30 days of promulgation. Otherwise, the United States district courts would have original jurisdiction of all other litigation arising under the Act.

However, this section would not apply to actions taken under the act by the Civil Aeronautics Board, the Interstate Commerce Commission, the Federal Power Commission, or the Federal Maritime Commission. The judicial review provisions in their respective organic acts would apply for the sake of uniformity.

House amendment

Section 109(a) would provide for the streamlining of administrative procedures for actions taken pursuant to this Act and the Emergency Petroleum Allocation Act, including the formulation of energy conservation plans.

Actions taken under title I of the bill and under the allocation exchange authority in section 205 would be subject to special administrative procedure and judicial review provisions. Section 109 would provide expedited administrative procedures for Federal actions. These same procedures would also apply to State actions unless the Federal Energy Administrator specified different but comparable procedures for the State. Included among the procedures are publication and notice and an opportunity for comment on agency rules and orders. All rules and orders issued by Federal and State agencies both under title I and under the new subsections (h) and (i) of section 4 of the Emergency Petroleum Allocation Act would be required to include provisions for making adjustments in hardship cases.

Section 109(b) would provide judicial review of rules issued under these provisions in the Temporary Emergency Court of Appeals which was created under the Economic Stabilization Act. Orders issued in individual cases would be reviewed first in the United States district court and then in the Temporary Emergency Court of Appeals.

Section 109(c) would authorize the Administrator to prescribe by rule procedures for State or local boards carrying out functions under the Act or the Emergency Petroleum Allocation Act. Such procedures would apply in lieu of those in section 109(a) and would require notice to affected persons and an opportunity for presentation of views. Such boards must be of balanced composition reflecting the makeup of the community as a whole.

The bill would not alter the judicial review provisions of the Clean Air Act. These would continue to apply to actions taken by the Administrator of EPA under that Act, including the amendments made to that Act by the Energy Emergency Act.

Conference substitute

Section 118 of the conference substitute incorporated provisions of both the Senate bill and the House amendment. The administrative procedures of section 118(a) are the same as the streamlined administrative procedures of section 109(a) of the House amendment, with the addition of section 311(c)(1) of the Senate bill as section 118(a)(5) of the conference substitute.

Section 118(b) on judicial review is the same as section 312 of the Senate bill, except that any actions taken by any State or local officer who has been delegated authority under section 122 of the conference substitute would be subject either to district court jurisdiction or to appropriate State courts.

PROHIBITED ACTS

Senate bill

No provision.

House amendment

Section 110 stated that the following acts would be prohibited under the Act: (1) to deny full fillups of diesel fuel to trucks, unless a rationing program is in effect which restricts such full fillups to trucks or if the diesel fuel is not available for sale; (2) to violate any order concerning the use of coal as a primary energy source pursuant to section 106; (3) to violate export restrictions established under section 123; (4) to violate any order of the Renegotiation Board issued pursuant to its authority under section 117.

Conference substitute

Section 119 of the conference substitute makes it unlawful for any person to violate any provision of Title I of this legislation (except provisions making amendments to the Emergency Petroleum Allocation Act and section 113) or to violate any rule, regulation (including an energy conservation plan), or order issued pursuant to such provisions.

ENFORCEMENT

Senate bill

Section 306 provided for application by the Attorney General to the appropriate United States district court to restrain violation of the Act or regulations or orders issued thereunder by issuing a temporary restraining order, preliminary or permanent injunction.

Section 307 provided for a criminal penalty of not more than $5,000 for each willful violation of any order or regulation issued pursuant

to the Act and a civil penalty of not more than $2,500 for each day of each violation of any order or regulation issued pursuant to the Act. In addition, subsection (c) made it unlawful to sell or distribute in commerce any product or commodity in violation of an applicable order or regulation. Any person who knowingly and willfully, after having been subjected to a civil penalty for a prior violation of any order or regulation violated the same provision of that order or regulation would be fined not more than $50,000 or imprisoned not more than six months, or both.

House amendment

Section 111 provided for fines up to $5,000 for each willful criminal violation of the Act, and civil penalties up to $2,500 for each violation of any provision of a prohibited act.

The Attorney General was authorized by this section to obtain temporary restraining orders or preliminary injunctions against actual or impending violations of this Act. It also provided for the private injunction actions.

Conference substitute

Section 120 of the conference substitute is the same as the House amendment. In addition, the provisions of subsection (c) of section 307 of the Senate bill are included.

USE OF FEDERAL FACILITIES

Senate bill

Section 305 would provide for the use of surplus government equipment or facilities, whenever practicable and to facilitate the transportation and storage of fuel, by domestic public entities and private industries for the duration of the emergency. Arrangements for such use with Federal agencies or departments must be made at fair market prices and only if such facilities or equipment would be needed, otherwise unavailable, and not required by the Federal government.

House amendment

No provision.

Conference substitute

Section 121 of the conference substitute is the same as the Senate bill, except that such government equipment or facilities must also be appropriate to the transportation and storage of fuel and can be acquired as well as used by domestic public entities and private industries. The use of Federal facilities is authorized during the period beginning on the date of enactment and ending May 15, 1975.

This provision was adopted by the conferees primarily for the purpose of freeing for use tankers now being kept in "mothballs" by the Armed Services. Such tanks, largely left over from World War II, could be used by private carriers for storing oil or for transporting oil in coastwise trade where the Jones Act would otherwise prohibit the use of foreign tankers. It was the express intent of the conferees that any use of such surplus Federal equipment would not put the Federal government in the transportation business. The Navy, for example, would not be required to operate any tankers used for private shipment of oil.

DELEGATION OF AUTHORITY AND EFFECT ON STATE LAWS

Senate bill

Section 304 would provide that only State laws or programs which are inconsistent with this legislation would be superceded by it.

House Amendment

Section 108 would permit the Administrator to delegate all or any of his functions under the Act or the EPAA to any officer or employee of the Federal Energy Administration. He could also delegate any of his functions relative to implementation of regulations and energy conservation plans under either of such Acts to State officers or State and local boards of balanced composition. This section would also repeal section 5(b) of the EPAA, effective on the date of transfer of functions under such Act to the Administrator.

Conference substitute

Subsection (a) of section 122 of the conference substitute is the same as the House amendment except that the Administrator may only delegate any of his functions relative to implementation of energy conservation regulations to officers of a state or locality.

Subsection (b) is the same as the Senate bill, except that a technical amendment is made reflecting the fact that the terms "regulation", "order" and "energy conservation plan" are used in the legislation rather than "program".

The administrative mechanism for the implementation of the conservation and rationing program provided for in the Act must be such as to insure equity on a nationwide basis. At the same time it is imperative that it be responsive to the varying conditions and unique problems of the several States and regions of the Nation. For that reason, the conferees drew from both the House and Senate bills in drafting sections 104 and 122 which authorizes the Administrator to delegate functions assigned to him. Such delegation may be to either State and regional officers of the Administration or to the officers of a State or locality. For the implementation of rationing programs the establishment and use of State or local boards to handle hardship appeals and perform other functions is authorized. To insure that any rationing program is as just and equitable as possible, section 122 specifically requires the State or local boards must be of balanced composition so as to reflect the makeup of the community as a whole. This provision is intended to insure that the interests of all classes of users are both represented and protected. The Act authorizes the appropriation of funds from which the Administrator may make grants to the States for the exercise of such authority as he may delegate or for the Administrator of State or local energy conservation measures which are independent of the authority in this Act.

GRANTS TO STATES

Senate bill

Section 315 would authorize the President to make grants to any State or major metropolitan government, in accordance with but not limited to, section 302 for the purpose of assisting, developing, administering, and enforcing emergency fuel shortage contingency plans

under the Act and fuel allocation programs authorized under the Emergency Petroleum Allocation Act of 1973.

House amendment

Section 112 authorized to be appropriated such sums as might be necessary for the purpose of making grants to States to which the Federal Energy Administrator has delegated authority under section 109. The Administrator would prescribe the terms and conditions for such grants.

Conference substitute

Section 123 of the conference substitute authorizes funds for the Administrator of the Federal Energy Emergency Administration to make grants to States for the purposes of implementing authority he has delegated to them, or for the administration of appropriate State or local conservation measures where exempted from Federal conservation regulations under section 105 of the Act.

In authorizing grants to States for the purpose of carrying out their responsibilities implementing this Act, it was the express intent of the conferees that, if a rationing program were implemented, additional sums would need to be appropriated for grants in aid to the States for their participation in the rationing program.

REPORTS ON NATIONAL ENERGY RESOURCES

Senate bill

No provision.

House amendment

Section 126 would require the Administrator to issue regulations requiring persons doing business in the United States who on the effective date of the legislation are engaged in exploring, developing, processing, refining, or transporting by pipeline, any petroleum product, natural gas, or coal, to provide reports to the Administrator.

Such reports would be submitted every 60 days and a report would be required to cover the period from January 1, 1970, to the date covered by the first 60-day report.

Each report would show for the period covered the person's (1) reserves of crude oil, natural gas, and coal, (2) production and destination of any petroleum product, natural gas, and coal, (3) refinery runs by-product, and (4) other data required by the Administrator.

The Administrator would publish quarterly in the *Federal Register* a summary analysis of the data provided by such reports.

These reporting requirements would not apply to retail establishments.

Where any person is reporting all or part of the required data to another Federal agency, the Administrator could exempt the person from reporting all or part of the data to him and such other Federal agency would provide the data to the Administrator.

Provisions are included to protect trade secrets and proprietary information.

Conference substitute

Section 124 of the Conference substitute is the same as the House amendment.

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INTRASTATE GAS

Senate bill

Section 210 of the Senate bill would require the President, within 90 days after enactment of the legislation, to promulgate a plan for the development of hydroelectric resources. Such plan would provide for expeditious completion of projects authorized by Congress and for the planning of other projects designed to utilize available hydroelectric resources, including tidal power.

House amendment

Section 119 is the same as the Senate provision except that it would also apply to solar energy, geothermal resources, and pumped storage.

Conference substitute

Section 125 of the conference substitute provides that nothing in the legislation shall expand the authority of the Federal Power Commission with respect to non-jurisdictional natural gas.

EXPIRATION

Senate bill

Subsection (d) of section 202 would provide in part that the nationwide energy emergency and the authority granted by the Act would terminate one year after the date of enactment.

House amendment

Subsection (b) of section 125 would provide for the expiration of all authorities granted under Title I of the Act or under the Emergency Petroleum Allocation Act on May 15, 1975.

Conference substitute

Section 126 of the conference substitute follows the House amendment by providing that the authority under Title I to prescribe any rule or order or take other action shall expire on midnight, May 15, 1975. In addition, the authority under Title I to enforce any such rule or order shall likewise expire; however, such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, May 15, 1975.

AUTHORIZATION OF APPROPRIATIONS

Senate bill

Section 318 would authorize to be appropriated such funds as were necessary for purposes of the Act.

There were authorizations of appropriations for particular provisions which have been considered in the appropriate sections of this statement.

House amendment

The House amendment contained no provision for the authorization of funds to carry out all provisions of the Act but included authorizations of appropriations for particular provisions which have also been considered in the appropriate sections of this statement.

Conference substitute

Section 127 of the conference substitute authorizes an appropriation to the Federal Energy Emergency Agency to carry out its functions under this legislation and under other laws, and to make grants to states under section 123, of $75,000,000 for each of the fiscal years 1974 and 1975. In addition, for the purpose of making payments under grants to States to carry out energy conservation measures under section 123, $50,000,000 is authorized to be appropriated for fiscal year 1974 and $75,000,000 is authorized to be appropriated for fiscal year 1975. Also, for the purpose of making payments under grants to States under section 116, $500,000,000 is authorized to be appropriated for fiscal year 1974.

SEVERABILITY

Senate bill

Section 319 would provide that if any provision of the legislation or the applicability thereof is held invalid, the remainder of legislation would not be affected thereby.

House amendment

No provision.

Conference substitute

Section 128 of conference substitute follows the Senate bill and also specifies that if the application of any provision to any person or circumstance shall be held invalid, such application to other persons or circumstances shall not be affected thereby.

IMPORTATION OF LIQUEFIED NATURAL GAS

Senate bill

No provision.

House amendment

Section 118 would amend the Emergency Petroleum Allocation Act of 1973 by adding a new section 9. This new section 9 would authorize the President to permit liquefied natural gas imports on a shipment-by-shipment basis until the expiration of the legislation.

Conference substitute

The Senate recedes.

ASSISTANCE TO HOMEOWNERS AND SMALL BUSINESSES

Senate bill

Section 308 of the Senate bill provided for the Federal Housing Administration and the Small Business Administration to make low-interest loans to homeowners and small business for the purpose of making energy-saving improvements on their homes or business establishments. The section further provided that maximum assistance and consideration be given to small business in the implementation of energy conservation measures.

House amendment

The House amendment contained no such provision.

Conference substitute

Section 130 of the conference substitute adopted the Senate language, except that loans to homeowners are to be made by the Department of Housing and Urban Development rather than through the Federal Housing Administration.

In adopting this provision it was the intent of the conferees that such low-interest loans would be available to those already eligible for assistance under existing agency programs: it was not the intent of the committee to broaden the base of eligibility for loans, but rather to increase the scope of uses to which such loans would be put by eligible persons. It is the anticipation that the availability of such loans will facilitate inculcation of the energy conservation ethic in the American people.

PROHIBITION AGAINST FUEL ALLOCATION FOR CERTAIN SCHOOL BUSING

Senate bill

No provision.

House amendment

Section 103 would add a new section 4(k) to the Emergency Petroleum Allocation Act of 1973. Under the section no refined petroleum product could be allocated under a mandatory fuel allocation regulation made under section 4(a) of that Act to be used to transport any public school student to a school farther than the public school closest to his home offering the courses for the grade level and course of study of the student which is within the school attendance district where the student resides.

This would not prevent the allocation of refined petroleum products for transportation to relieve overcrowding, to meet needs for special education, or if the transportation is within the regularly established neighborhood school attendance areas.

These provisions would not take effect until August 1, 1974.

Conference report

The House recedes.

NATIONAL ENERGY EMERGENCY ADVISORY COMMITTEE

Senate bill

Section 310 would establish a National Energy Emergency Advisory Committee to advise the President with regard to implementation of this legislation. The Chairman of the Committee would be the Director of the Office of Energy Policy.

The Committee would consist of 20 members (in addition to the chairman) appointed by the President representing specified interests.

The heads of listed Federal departments, agencies, and instrumentalities would designate a representative to serve as an observer at each meeting of the Committee and to assist the Committee in performing its functions.

House amendment

No provision.

Conference substitute

The Senate recedes.

HOMEOWNER TAX DEDUCTIONS

Senate bill

Section 209 would amend the Internal Revenue Code to allow a taxpayer to deduct an energy-conserving residential improvement expense, not to exceed $1,000, paid or incurred by him during the taxable year on his tax return for such year. These amendments apply to taxable years ending after the date of enactment of the Act and expire on termination of the Act.

House amendment

No provision.

Conference substitute

The Senate recedes.

INTERNATIONAL AGREEMENTS

Senate bill

Section 202(b) would authorize the President to enter into agreements with foreign entities, or to take such other action as he deems necessary, with respect to trade in fossil fuels, to achieve the purposes of the legislation. Any formal agreement would be submitted to the Senate and would be operative but not final until the Senate had 15 days, at least 7 of which were legislative days, to disapprove the agreement.

Section 202(c) expresses the sense of Congress that the energy crisis is also an international problem and therefore the United States should attempt to reach an agreement with other member nations of the Organization for Economic Cooperation and Development with respect to supplies of energy available to the industrialized nations of the free world with special reference to joint or cooperative research and development of alternative sources of power.

House amendment

No provision.

Conference substitute

The Senate recedes.

Although the Senate receded on these provisions because of a jurisdictional problem on the House side, the conferees wish to make clear that the section was dropped without prejudice from the bill.

CONSULTATIONS WITH CANADA

Senate bill

Section 601 would direct the President to convene consultations with the Government of Canada at the earliest possible date to safeguard joint national interests through consultations on encouraging trade in

natural gas, petroleum, and petroleum products between the two nations. The President must make an interim report to Congress on the progress of such consultations within forty-five days after enactment and a final report with legislative recommendations ninety days after enactment.

House amendment

No provision.

Conference substitute

The Senate recedes.

TITLE II—COORDINATION WITH ENVIRONMENTAL PROTECTION REQUIREMENTS

SHORT-TERM AND LONG-TERM SUSPENSIONS

SHORT TERM

Senate bill

The Senate bill would have allowed temporary suspensions of any emission limitation requirement or compliance schedule contained in a state implementation plan, regardless of whether the origin of the suspended provision was in State, Federal, or local law. Suspensions could only be granted during the period commencing November 15, 1973, and ending August 15, 1974, and no suspension could last beyond November 1, 1974. Only currently existing stationary fuel-burning sources which had been deprived of their supplies of clean fuel by actions taken by the President under the Senate bill itself would have been eligible to receive for suspensions, and no suspension could be granted unless the Administrator of EPA found either (i) that a suspension was essential to enable clean fuels to be redistributed to another area in order to avoid or minimize violations of primary air quality standards, or (ii) that the source in question was not likely to have available a sufficient supply of clean fuels even after all practicable steps to allocate such fuels had been taken. Suspension would only last for as long as clean fuels were unavailable. Where practicable, a suspension would be conditioned on the source's agreeing to keep on hand an emergency supply of clean fuel to burn during periods of air stagnation. The Administrator could deny any suspension request if he found that an imminent and substantial endangerment to the health of persons would result from granting it.

Suspension applications would be heard under abbreviated administrative procedures, and would not be subject to judicial review under Sections 304 or 307 of the Clean Air Act.

SHORT TERM

House amendment

The House amendment would have allowed the Administrator of EPA during the period between enactment and May 15, 1973, to suspend any fuel or emission limitation (including compliance schedules) contained in an applicable implementation plan. The only ground for granting such a suspension would be inability to comply with the suspended requirement due to unavailability of types or amounts of

fuels. Interim requirements of emission control could be imposed as a condition of suspension.

No procedural requirements would apply to suspension applications under the terms of any law, and judicial review of their grant or denial would be severely restricted.

LONG TERM

Senate bill

The Senate bill provided for revisions of State implementation plans, which could be requested by either individual sources or by a State. The Administrator would be required to approve or disapprove suspension applications within 60 days if requested by a source, or within 120 days if requested by a State. For a revision requested by a source to be approved, the Administrator would have to determine, after notice and opportunity for presentation of views, (1) that the source was able to enter into a contract either for a permanent continuous emission reduction system which the Administrator determined to have been adequately demonstrated or for a long term supply of low sulfur fuel, and (2) that the revision was consistent with the implementation plan so that ambient air quality standards would still be attained. The Administrator's approval would have to be conditioned on the source actually entering into such contract. Any plan revision, whether requested by a source or a State, would have to include legally enforceable compliance schedules for the fuel burning sources affected by the revision. The schedule would establish continuous emission reduction measures to be employed by the sources, including interim steps of progress toward implementation of such measures, and would provide for alternate emission control measures that could be employed during the interim period before final compliance with the applicable emission limitations to minimize pollutant emissions. Any such revisions could defer compliance only until July 1, 1977, although a one-year extension pursuant to section 110(f) of the Act would be authorized.

LONG TERM

House amendment

The House amendment provided that the Administrator could suspend fuel or emission limitations upon his own motion or upon the application of a source of a State (1) if he found that the source could not comply because of the unavailability of types and amounts of fuels, (2) if the suspension would not cause violations of a primary ambient air quality standard beyond the time provided for attainment of such standard in the plan, and (3) if the source were placed on a compliance schedule, with increments of progress, which would provide for the source to use methods of emission control that would assure continuing compliance with a natural ambient air quality standard as expeditiously as practicable. No such suspension could defer compliance beyond June 30, 1979. Notice and opportunity or presentation of views would be required before approval of any such suspension. The compliance schedule would have to include a date for entering into a contractual obligation for an emission reduction system which the Administrator had determined to be adequately demonstrated. A source could also construct and install such a system itself if it provided plans

and specifications for installation of such a system. Sources were given the option of not providing a compliance schedule with a contract date, or plans for an emission reduction system, if the source elected (prior to May 15, 1977) not to provide one, and established to the satisfaction of the Administrator that it had binding, enforceable rights to sufficient low polluting fuels or other means of insuring long-term compliance. If such an election were made, the amendment would limit the suspension to no later than May 15, 1977. In granting suspensions, the Administrator could impose interim requirements to minimize adverse health effects before the primary ambient air quality standard was achieved and to assure maintenance of the standard where the suspension extended beyond the attainment date deadline.

The House amendment specifically provided that such interim requirements could include intermittent control measures which the Administrator determined to be reliable and enforceable and which would permit attainment and maintenance of primary ambient air quality standards during the suspension. The interim requirements would include the obligation to utilize fuels or emission reduction systems that would permit compliance with the suspended fuel or emission limitation when such fuels or systems became available. However, use of such fuel would not be required if the costs of changing the source to permit it to burn the fuel would be unreasonable.

The House amendment also provided additional provisions making the terms of such suspensions enforceable under the Clean Air Act and to require the Administrator to publish reports at 180-day intervals on the status and effect of such suspensions. Limited judicial review of any suspension was also specified.

A specific exemption of certain coal-fired steam electric generating plants from fuel or emission limitations was provided for in the House amendment. Only facilities which were to be permanently taken out of service by December 31, 1980, and which had certified such fact to the satisfaction of the Federal Power Commission would be eligible for such exemption. Interim requirements could, however, be imposed on such facilities. The suspension would be authorized whenever the Administrator determined that compliance was unreasonable in light of (1) the useful life of the facility, (2) the availability of rate increases, and (3) the risk to the public health and the environment of such exemption.

The House Amendment also contained a separate provision in section 106(b) which provided for suspension of fuel or emission limitations that would prohibit the use of coal with respect to any source which was ordered to convert to coal by the Administrator of the Federal Energy Administration pursuant to section 106(a) of the House bill or which had voluntarily begun to convert to coal prior to the effective date of the Act. The suspension would have extended to January 1, 1980, and would have been available only if the Administrator of the Environmental Protection Agency approved, after notice and opportunity for presentation of oral views, a plan submitted by the source. The plan would, in order to be approved, have to provide (1) that the power plant would use the control technology necessary to permit the source to comply with national ambient air quality standards as expeditiously as practicable; (2) that the power plant was placed on a schedule providing for the use of emission re-

duction systems as soon as practicable but no later than June 30, 1979, and (3) that the power plant would comply with such interim requirements as the Administrator of the Environmental Protection Agency prescribed to insure that the power plant would not contribute to a substantial risk to public health. Such plans were to be approved before May 15, 1974, or within 60 days after submittal if submitted after that date.

The Administrator of the Environmental Protection Agency was, however, authorized, after notice and opportunity for presentation of oral views, to prohibit the use of coal if he determined that the use of coal would be likely to materially contribute to a significant risk to public health, or to require the use of a particular grade of coal if it were available to the power plant.

Conference substitute

Several changes have been made in the language of title II and in the conference report statement of managers since the original conference report was filed on January 22, 1974 (H. Rep. No. 93-763). These changes do not represent substantial changes in policy; rather they are intended to cure inadvertent omissions, to clarify ambignities, to make the statutory language conform more closely to the intent of the conferees, and to correct certain printing errors.

The conference substitute provides for short term suspension of stationary source fuel or emission limitations but, with one exception, does not authorize long term delay of such limitations. The conference substitute adds a new section 119 to the Clean Air Act which will permit the Administrator of the Environmental Protection Agency to suspend until November 1, 1974, any stationary source fuel or emission limitation, either upon his own motion or upon the application of a source or a State, if the source cannot comply with such limitations because of the unavailability of fuel. The Administrator of the Environmental Protection Agency is directed to give prior notice to the Governor of the State and the chief executive of the local governmental unit where the source is located. He is also directed to give notice to the public and to allow for the expression of views on the suspension prior to granting it unless he finds that good cause exists for not providing such opportunity. Judicial review of such suspension would be restricted to certain specified grounds.

The Administrator is required to condition the granting of any suspension upon adoption of any interim requirements that he determines are reasonable and practicable. These interim requirements must include necessary reporting requirements, and a provision that the suspension would be inapplicable during any period when clean fuels were available to such source. The Administrator would be required to determine when such fuels were in fact available. It is the intent of the conferees that the Administrator in making such determination take into consideration the costs associated with any changes that would be required to be made by the source to enable it to utilize such fuel. No source which has converted to coal under section 119, however, could be required under this provision to return to the use of oil or natural gas.

The suspension would also be conditioned on adoption of such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to the health of persons. This would authorize not only requirements that a facility shut down during air pollution emergencies, but also (for example) a requirement that it keep a reserve supply of clean fuels on hand to be burned to avoid such emergencies.

The purpose of the short term suspension provision is to enable sources to continue operation during the immediate fuel shortage while at the same time limiting as much as possible the impact on air quality. In rejecting the provisions for long term suspensions, the conferees were of the opinion that more information and experience should be acquired before any long term postponement of emission limitations was authorized. If additional tools for dealing with energy shortages are needed by the end of 1974, the Congress can address the issue prior to that time. For this reason both the provisions in section 402 of S. 2589 and comparable provisions in the House bill were rejected.

In recognition of the need to balance energy needs with environmental requirements and the unique problems facing any source which converts to coal in response to the emergency, the conferees adopted a provision which provides that no air pollution requirement (as defined in the conference substitute) could have the effect of prohibiting any such source from burning coal, except as provided in section 119 (b) (1) (C). The conference bill would prohibit the application of such requirements to sources which are either ordered to convert to coal or which began to convert to coal during the 90-day period prior to December 15, 1973. This prohibition against application of such requirements to such source could in some instances continue until as late as January 1, 1979. The prohibition would only apply if the source were placed, after notice and opportunity for oral presentation of views, on a schedule approved by the Administrator of the Environmental Protection Agency. The schedule must provide a timetable for compliance with the fuel or emission limitations of the applicable implementation plan no later than January 1, 1979.

One problem which the language of the new conference agreement is intended to remedy relates to use of the phrase "by the applicable implementation plan in effect on the date of enactment of this section" in section 119(b) (2) (B). This phrase poses no problem in states other than Ohio and Kentucky. However, in these two states, there is no applicable implementation plan in effect. This is so, because of the Sixth Circuit Court of Appeals' opinion and order in *Buckeye Power, Inc.* v. *Environmental Protection Agency*, No. 72–1628 (6th Circ. 1973) and consolidated cases. The conferees do not intend to preclude sources located in Ohio or Kentucky from eligibility for the exemption provided in section 119(b) (1). Therefore, the language of section 119 (b) (2) (B) has been modified to permit the Administrator to approve a plan for a source located in either of these states if the plan provides a compliance schedule to achieve "the most stringent degree of emission reduction that such source would have been required to achieve . . . under the first applicable implementation plan which takes effect after" the date of enactment.

All compliance schedules under section 119(b) must also provide for compliance with interim requirements that will assure that the source will not materially contribute to a significant risk to public health.

The conference committee wishes to emphasize that the Administrator would not be able to approve a plan under section 119(b) for a utility generally. Rather, each plan approval must be for a specific plant. Moreover, before ordering the source to convert under section 106 of the Energy Emergency Act, the Federal Energy Emergency Administrator would be expected to make a careful, case-by-case balancing analysis of the energy need and environmental harm which might result from such an order. The same type analysis must be made by the FEEA Administrator prior to permitting a source which began conversion to coal in the 90 days prior to December 15, 1973, to continue to burn coal under a section 119(b) exemption. The FEEA Administrator in making such an analysis is expected to consult and cooperate with the Administrator of EPA.

There are three basic reasons for the conferees' decision to encourage continued burning of coal until at least 1979. First, in order to encourage the opening of new coal mines to increase energy supplies, the conferees intend to encourage an on-going substantial demand for such coal. Without reasonable likelihood that new coal mines will be able to market their new production, the opening of new mines and expansion of existing mine capacity may be regarded too risky. Second, to the extent that electric generating power plants can be encouraged to cease burning oil and natural gas, these fuels would be available to meet other energy needs, such as production of gasoline and home heating oil. Finally, since continuous emission reduction technology is available for major sources such as power plants, but is not available for sources such as homes, apartment houses, and small businesses, the purposes of the Clean Air Act can be better effectuated by having low pollution oil and natural gas burned to the maximum extent feasible, in sources for which no effective clean up technology is available.

The conferees believe that the priority effort of each source which is subject to section 119(b) should be to obtain low sulfur coal. If an adequate, long-term supply of low sulfur coal is available to such a source, the Administrator should only approve a plan which requires its use (and thus compliance with air pollution requirements) as expeditiously as practicable. In such a case, the Administrator would have to disapprove a plan which proposed to wait until January 1, 1979, before beginning to burn low sulfur coal. The conferees believe that requiring priority consideration to the use of non-metallurgical low sulfur coal will reduce the likelihood of extended violation of applicable emission standards.

If a source is unable to obtain an adequate, long-term supply of low sulfur coal, it may seek to come into compliance by use of a continuous emission reduction system or by use of coal byproducts which would achieve the required degree of emission reduction. In such case, the source would still be required to act expeditiously to obtain an adequate supply of coal. However, compliance with all air pollution requirements would be required "not later than January 1, 1979" and "by a date established by the Administrator".

It is expected that the Administrator would include, but would not be limited to, the following requirements in any compliance schedule:

(1) the dates by which the source will solicit bids and enter into binding contractual agreements (or other equally binding

commitment) for the procurement of an adequate fuel supply to permit continued long term operation of the source;

(2) where the coal obtained by the source has sulfur content which will require installation of continuous emission reduction equipment to enable the source to comply with emission limitations, the dates for soliciting bids for such equipment, contracting for such equipment, and installation and start-up of such equipment by a date that will permit a reasonable time for necessary adjustments of the equipment to maximize the reliability and efficiency of the system prior to January 1, 1979; and

(3) reasonable interim measures which the source should employ to minimize the adverse impact on air quality.

In establishing dates for contracting for coal, the Administrator should determine the earliest date that is reasonable and which will permit compliance by the time specified in this section. Because the dates for obtaining coal or continuous emission reduction systems may occur at approximately the same time for more than one source which may overburden suppliers, the Administrator is specifically authorized to establish differing dates for obtaining coal or such systems to insure availability of supplies of such coal or equipment. In making such decisions, it is expected that the Administrator will provide the earliest date for those sources in areas with the most serious pollution problems.

It is the intent of the conferees that when the coal available to the source necessitates the use of continuous emission reduction equipment for control of sulfur-related emissions, the source will have as much time as necessary to install the equipment and achieve timely compliance, in order to permit the orderly development of technology.

In recognition of the complex factors involved in determining schedules for the various sources, the conferees intend that the Administrator have broad discretion in prescribing and approving schedules of compliance to insure that sources meet the requirements of this section without overburdening production capacity for continuous emission reduction systems for sulfur control or causing unacceptable disruption in energy production capacity.

The conference committee does not intend to permit delay of existing compliance schedules for control of particulate emissions. Some slight delay may be necessary in light of revised compliance schedules for control of sulfur-related emissions. However, only such minor adjustments as the Administrator determines to be unavoidable should be permitted in existing compliance schedules and emission limitations for control of particulates.

The provision relating to conversions under section 119(b) does not apply to fuel burning stationary sources which would propose to reconvert to oil or natural gas by November 1, 1974. Only fuel burning stationary sources which select coal, receive EPA approval and submit a new compliance schedule which will achieve applicable emission limitations no later than January 1, 1979, can take advantage of section 119(b) beyond November 1, 1974. After November 1, 1974, fuel burning stationary sources which choose to reconvert to oil or natural gas remain subject to compliance schedules which were applicable prior to the temporary suspension or exemption.

The conference bill does provide for two exceptions to the prohibition on enforcing air pollution requirements. The Administrator, or

a State or local governmental unit, may, after notice and opportunity for presentation of oral views, prohibit the use of coal if it is determined that such use will materially contribute to a significant risk to public health. The Administrator, or a State or local government unit, may also require that a source use a particular grade of coal or coal with particular pollutant characteristics if such coal is in fact available to such source.

The term "significant risk to public health" is used in several instances in section 119. The conferees are aware that the Environmental Protection Agency, taking its lead from the Senate Committee Report on section 303 of the Clean Air Amendments of 1970, has defined "imminent and substantial endangerment" by regulation as a significant risk to the health of persons and has specified levels for various pollutants which reflect its judgment as to where those risks occur. The conferees emphasized that the language which is used in section 119 is not used in the same sense as in the EPA regulations. Rather, the language of the conference substitute, as with the House-passed bill, deals with risks to health which are less severe than those specified by the Agency's "endangerment" regulations. What is intended is that some violation of the national primary ambient air quality standards can be permitted so long as any of the public would not be exposed to significant health risks.

The conference bill makes explicit that the period of inapplicability under section 119(b) of State implementation plan requirements may be extended for one year under the procedures of section 110(f) of the Clean Air Act. It is the intent of the conferees, however, that the requirement of that section be clearly satisfied before and one year suspension is granted; the conferees believe that requiring compliance by 1979 should permit adequate time for all sources to achieve compliance. The additional one year postponement to 1980 should only be necessary to accommodate strikes, natural disasters or other unanticipated occurrences that may prevent compliance by that time.

The House-passed bill would have permitted the use of so-called intermittent or alternative control strategies as a means of meeting ambient air quality standards if such strategies were determined by the Administrator to be reliable and enforceable. This permission would have applied to both existing sources not affected directly by the energy emergency and sources required to convert to coal under the emergency legislation.

The Senate bill would have permitted revision of existing implementation plans to require use of continuous emission reduction systems on any fuel-burning stationary sources affected by shortages of fuels, suspensions or conversions.

The conference agreement does not include either of the foregoing broad provisions. Instead, the conferees decided to limit the application of this provision to those sources which convert to combustion of coal as a result of the energy emergency. The conference substitute requires these converting sources to come into compliance with all plan requirements by 1979 (or 1980, if a postponement is obtained under section 110(f)) in accordance with a schedule which meets requirements of regulations of EPA. These requirements would require incremental steps toward compliance by utilization of low sulfur coal or coal by-products, or by continuous emission reduction systems to per-

mit the combustion of high sulfur coal (or coal with high ash content) in compliance with such plan requirements.

The opportunity to continue to burn coal until January 1, 1979, would extend to sources which began converting to coal use at any time between September 17 and December 15, 1973. The language of section 119(b)(1) and the conference report printed on January 22, 1974 (H. Rep. No. 93–763) was subject to various conflicting interpretations as to what was meant by "began conversion". In order to clarify the intent of the conference bill, an amendment has been added to define this term. The intent of this amendment is to indicate that in order to be eligible for the exemption of section 119(b)(1), the source must do more than merely create a contingency capability to burn coal. Rather, the source must have made a firm determination to cease burning oil or natural gas and to burn coal instead. Moreover, the source must carry out this determination expeditiously and in good faith. Thus, the mere solicitation of bids for a coal supply would not necessarily in and of itself constitute action to begin conversion to the use of coal. The new amendment retains the intent of the conferees to permit the Administrator of the Environmental Protection Agency to exercise his discretion in deciding whether any particular source "began conversion to the use of coal" within the meaning of section 119(b)(1).

The conferees intend that all limitation of State and local authority which is contained in section 119(b) would cease to be effective on January 1, 1979.

The conference bill includes the House amendment provision which authorizes the Administrator of the Environmental Protection Agency to allocate continuous emission reduction systems among users where supplies are less than demand. This provision is modified in the conference substitute to include the stipulation in the Senate bill that such allocation authority shall not impair the obligation of any contract entered into prior to the enactment of this Act.

STUDY AND REPORTS

The conference bill also adopts the provisions of the House bill which required the Administrator of the Environmental Protection Agency to report to Congress on the impact of fuel shortages on the Clean Air Act programs as well as other factors, including the availability of continuous emission control equipment. The Administrator would also have to publish periodic reports on compliance with requirements imposed as part of any suspension or coal conversion, and other information on the impact of the section. The only change from the House version was to provide for reports on all continuous emission reduction systems and not limit the report to scrubbers. The conference bill also retained the House bill provisions making the violation of any requirement imposed as part of the new section 119 subject to enforcement under section 113 of the Act. Finally, the conference version adopts the House bill provision preempting any State or local government from enforcing a fuel or emission limitation against a source granted a suspension under the section because of the availability of fuel to permit the source to comply with such fuel or emission limitation. Such preemption does not apply with respect to requirements which are identical to Federal interim requirements.

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The conference bill adopts a provision similar to that in the House bill, which provided a specific exemption for electric generating plants which are scheduled to be permanently taken out of service by 1980. Unlike the House bill, the conference substitute authorizes a one year postponement of applicable plan requirements for certain power plants. To be eligible, the power plant must be on a schedule to cease operations by January 1, 1980. The Federal Power Commission must also determine that the facility will in good faith carry out such plan.

To obtain the one year postponement of an emission limitation which is part of a State implementation plan, the Governor of the State must concur in the application to the Administrator of the Environmental Protection Agency. The Administrator shall consider the risk to the public health and welfare and only grant the postponement if he determines that compliance is not reasonable in light of the projected useful life of the plant and availability of rate increases, as well as other factors. He may prescribe such interim requirements as may be reasonable. The conferees limited this suspension to one year since it is intended that this bill only address the immediate energy emergency and the conferees do not intend for any electric generating facility to be shut down in the near future because of the infeasibility of employing required emission control measures due to the age of the facility. The Congress intends to review the long term energy problems and environmental needs during the next year and will consider such relief as may be justified to alleviate the problems presented to facilities, including power plants, which are scheduled to be phased out.

FUEL EXCHANGE AUTHORITY

House amendment

Section 205 of the House amendment would have directed the Administrator in establishing any allocation program to allocate low sulfur fuels to those areas of the country designated by the Administrator of EPA as requiring such fuels to avoid or minimize adverse health effects. This provision would have taken effect after May 15, 1974 and after such an allocation program had been established.

Section 205 would have further authorized the Administrator of EPA by rulemaking after informal hearings to issue binding exchange orders to persons subject to it. Such exchange orders would have been designed to avoid or minimize the adverse effects of any allocation program on public health. They would only have been authorized if substantial emission reduction would have resulted.

By virtue of Section 106(c), the House amendment would have explicitly authorized the Administrator to establish allocation programs for coal. If such a program were established, it would have been subject to the provisions of section 205.

Section 119(c), of the Clean Air Act, added by Section 201 of the House amendment, would have allowed the Administrator of EPA to establish by rule priorities for the supply of emissions reduction system so that they could be routed to users in regions with the most severe air pollution.

Senate bill

Section 203 of the Senate bill would have required any general priority and rationing program to provide to the extent practicable

for allocation of low sulfur fuels to areas of the country designated by the Administrator of EPA as needing such fuels in order to avoid or minimize adverse impacts on public health.

The Administrator of EPA would be authorized under Section 402 of the Senate bill to further allocate low sulfur fuels within any such area. He would also be authorized to allocate emission reduction system first to users in air quality contract regions with the most severe air pollution (except that no such action could affect existing controls).

Conference substitute

In order to assure the Administrator of the Environmental Protection Agency an adequate supply of information on the types, amounts, price, pollution characteristics and allocation of available fuels, it is expected that he will have access to all data available to the Administrator of the Federal Energy Emergency Administration.

Such information will assist in effective and timely performance of the Administrator of EPA's function under this section as well as those provisions relating to suspensions, conversions, enforcement, and other responsibilities of EPA.

The conferees expect that both the FEEA and EPA Administrators will facilitate interagency cooperation and information exchange. EPA is expected to establish a permanent liaison in the office of the FEEA Administrator for the duration of the emergency and the FEEA Administrator is expected to do the same at EPA. This may reduce the confusion which can otherwise be expected to result from those decisions each agency is required to make under statutory authorization.

REVISIONS OF IMPLEMENTATION PLANS

Senate bill

The Senate bill provided that the Administrator of the Environmental Protection Agency was to review by May 1, 1974, all State implementation plans to determine if shortages of fuels of emission reduction systems, or any suspensions of emission limitations provided for in the bill (including future anticipated suspensions) would result in any plan failing to achieve the national ambient air quality standards within the time provided for in section 110 of the Clean Air Act. Where the results of review indicate that a plan would be inadequate, the Administrator would be directed to order those States to submit revisions to their plans by July 1, 1974, which would achieve the standards within the time limits. Two months were provided for the Administrator to review and approve or disapprove the plan revisions, and an additional two months were provided for him to promulgate regulations if a revision were not approvable.

House amendment

The House amendment contained a similar provision.

Conference substitute

The conference substitute provides that the Administrator will only review those plans for regions in which coal conversion under section 119(b) of the Clean Air Act may result in a failure to achieve a primary ambient air quality standard on schedule. The conference substitute directs the Administrator to order necessary plan revisions

within one year after such conversion that would set forth any additional reasonable and practicable measures required to achieve ambient air quality standards. The plan revision would have to consider whether, despite the coal conversions, the standards could be achieved through the use of additional reasonable and practicable measures (which may include energy conservation measures) that were not included in the original plan. In allowing up to a year for the Administrator of the Environmental Protection Agency to act, it is the intent of the conferees to permit both the Administrator and the States sufficient leadtime to develop adequate information on the impact of coal conversions, both effected and anticipated, and to permit accurate assessment of the additional measures required for State implementation plans.

The conferees expect that revisions under this section will be required only after careful consideration of a number of factors to assure that existing sources which do not convert will not be subjected to new requirements where such requirements are unreasonable or impractical. In determining reasonability and practicability, the Administrator shall consider whether the source is presently subject to requirements, is on schedule and has expended or is expending funds to comply. In this event, no requirement shall be imposed under this section which will require unreasonable additional expenditures. However, where reasonable measures can be imposed, without penalizing sources which are in compliance or are in the process of complying with the law, the Administrator shall impose such requirements.

TRANSPORTATION CONTROL PLANS

Senate bill

The Senate bill contained no provision relating to transportation control plans.

House amendment

The House amendment would have directed the Administrator, upon application by the Governor concerned, to extend until June 1, 1977, the date for achieving primary air quality standards in any air quality region subject to transportation controls which mandated a 20% or greater reduction in vehicle miles travelled by June 1, 1977, or imposed any transportation controls that could not be practicably implemented by that date. The Administrator could grant further extensions until January 1, 1985. These further extensions would be conditioned both on the application of all practicable interim control measuresand on the attainment of at least a 10% annual improvement in air quality.

The House amendment would also have directed the Administrator to conduct a study of the necessity of parking surcharges, review of new parking facilities, and preferential bus/carpool lanes to achieve air quality standards. The Administrator would be required to report to the appropriate committees of the Congress within six months after enactment. Until such measures had been explicitly authorized by the Congress in subsequently enacted legislation, the Administrator could not require them to be included in an implementation plan, although he could approve such measures if they were submitted by the State. Previously promulgated regulations requiring such measures would be declared null and void.

Conference substitute

The conference substitute does not contain the provisions of the House amendment allowing modifications of the date by which primary ambient air quality standards must be achieved. The conferees expect the appropriate committees of the Congress to include in their re-examination of the Clean Air Act scheduled for the next session of the Congress, consideration of the effect modifications in new motor vehicle emission standards will have on the ability to achieve the primary standards by statutory deadlines, as well as the practicability of various transportation control strategies within the time available.

The other related provision of the House amendment has been modified to provide that only parking surcharges (rather than surcharges, management of parking supply, and bus/carpool lanes) must receive the explicit authorization of the Congress before they may legally be imposed by the Environmental Protection Agency. The conference substitute would therefore continue to permit preferential bus/carpool lanes to be implemented by the Environmental Protection Agency as set forth in current transportation control plans. In implementing requirements for bus/carpool lanes, the basic responsibility rests with State and local governments and transportation agencies, and local hearings should be considered for specific proposals.

The conferees note that the appropriate committees with jurisdiction over the Clean Air Act will be reviewing the issues involved in transportation controls in hearings during the next session. The study mandated by this bill of the necessity and impact of these specific transportation controls will be useful to the committees in their inquiry.

In addition, the conferees direct the Administrator of the Environmental Protection Agency to review all the transportation controls which have been promulgated or proposed as to their efficacy and practicability, and to provide the appropriate committees with the results of that review in connection with hearings during 1974.

The conference substitute would also empower the Administrator of the Environmental Protection Agency to suspend for one year the review of new parking facilities. In response to inquiries by the conferees, the Administrator has provided a letter stating his intention to suspend these regulations under this authority.

U.S. Environmental Protection Agency,
Office of the Administrator,
Washington, D.C., December 19, 1973.

Senator Jennings Randolph,
Chairman, Senate Committee on Public Works,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: I would like to re-affirm for the record my understanding of our conversation yesterday on the subject of the "parking management" portions of EPA transportation control plans. I hope this letter will help to clarify EPA's position and that it will be useful to you in your continuing deliberations in the Senate-House conference on the Emergency Energy Bill.

I understand that based on provisions in the House Bill the conference committee has considered provisions which would by statute postpone requirements of parking management plans for at least one

year and that consideration has also been given to an alternative provision which would simply authorize EPA to grant such an extension. You have asked what action EPA would take pursuant to such a grant of authority. As I stated to you, our position if such authority were granted would be to delay for one year from enactment (i.e. until December 1974) the effective date of parking management plans promulgated by EPA which would otherwise go into effect at an earlier date.

During this year-long suspension, EPA would continue to work with the States and localities and to provide assistance to them in developing plans which will result in the necessary reductions of vehicle miles traveled by automobiles which are required to meet the ambient air standards and thereby to achieve compliance with the Clean Air Act. During this year, EPA would not impose any postponement or restraint on action by the States and localities in furtherance of parking management plans of their own, and it is our hope that we can assist the States and localities in developing long-term strategies to achieve clean air in urban centers.

We believe that parking management plans can provide an effective tool toward meeting air quality needs. Effective use of this tool, however, does depend largely on the understanding and support of State and local officials and the general public in the individual cities in question. Further review during the one year suspension contemplated by the committee would facilitate better understanding and support for such measures.

I want to thank you for the courtesy and hospitality you extended to me and my EPA colleagues yesterday.

Sincerely yours,

JOHN R. QUARLES, JR.,
Deputy Administrator.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., December 20, 1973.

HON. PAUL G. ROGERS,
House of Representatives,
Washington, D.C.

DEAR MR. ROGERS: I am writing pursuant to our telephone conversation this morning concerning my letter to Senator Randolph dated yesterday (with a copy to you) about the parking management plans. In that letter I indicated that if granted authority under the Emergency Energy Act EPA would delay until one year from now the effective date of parking management plans.

You have expressed concern that I referred to parking management plans only in relationship to transportation control plans, whereas the proposed legislation would apply also to review of parking facilities under our proposed indirect source regulations. As I explained to you, our position with regard to both is the same.

Very truly yours,

JOHN R. QUARLES, JR.,
Deputy Administrator.

Although the conferees do not believe that regulations on the management of parking supply should be made subject to prior congressional approval, they did conclude that a period for refining the

criteria which will be used in the review of such facilities and establishing the administrative machinery to review them should be permitted before the program is placed in operation. The conference substitute provides that when the suspension authority is exercised, no parking facility on which construction is initiated before January 1, 1975, would be subject to review for its impact on air quality as a result of any Environmental Protection Agency regulations on the management of parking supply.

In adopting these aspects of the conference substitute, the conferees do not intend to question either the need for, or the authority of the Administrator of the Environmental Protection Agency to impose,

AUTO EMISSIONS

Senate bill

S. 2589, as passed by the Senate, would not have affected section 202 of the Clean Air Act. The conference committee notes, however, that on December 17, 1973, the Senate passed a bill, S. 2772, which would have extended through 1976 the interim hydrocarbon, carbon monoxide, and oxides of nitrogen emission standards established by the Administrator for model year 1975 vehicles.

House amendment

The House amendment would have amended section 202 of the Clean Air Act to defer the date for achieving the statutorily required 90% reduction in hydrocarbon and carbon monoxide automobile emissions. The date would have been deferred from model year 1976 until model year 1978. The House amendment would have required the interim hydrocarbon and carbon monoxide emission standards established by the Administrator for 1975 model year automobiles to also be applied in model years 1976 and 1977. Under the House amendment, the nitrogen oxides emission standards for 1976 model year automobiles could not exceed 3.1 grams per mile; for 1977 and subsequent model year automobiles emissions of oxides of nitrogen could not exceed 2.0 grams per mile.

In addition, the Administrator of the Environmental Protection Agency would be authorized to extend the deadline for achieving the ambient air quality standards in any air quality control region for up to two years to the extent he determined that an inability to achieve the standards on schedule would result solely from the modifications of the statutorily mandated auto emission levels and the deadlines for achieving those standards.

Conference substitute

The conference substitute amends section 202 of the Clean Air Act to continue the emission standards established by the Administrator for 1975 model year automobiles during the 1976 model year. The effect of this provision is to maintain in the 1976 model year a Federal 49-State standard of 1.5 grams per mile of hydrocarbons, 15.0 grams per mile of carbon monoxide and 3.1 grams per mile of oxides of nitrogen, and a standard for California of 0.9 grams per mile of hydrocarbons, 9.0 grams per mile of carbon monoxide, and 2.0 grams per mile of oxides of nitrogen. These standards apply to automobiles produced by all manufacturers, whether or not any individual manufacturer had applied for or received a suspension under section 202 (b) (5) previous to the enactment of this Act.

The conference substitute provides that after January 1, 1975, an automobile manufacturer may seek a single one-year suspension of the statutory standards for hydrocarbons and carbon monoxide applicable to the 1977 model year. The Administrator would be required to establish interim emission standards for 1977 model automobiles for hydrocarbons and carbon monoxide if he grants the suspension.

In authorizing the suspension for the 1977 model year, the conferees point out that one of the considerations advanced by Judge Levanthall in remanding EPA's decision not to authorize a suspension of the 1975 standards for one year was that adverse fuel economy would deter consumer purchasing of new automobiles, resulting in greater retention of old automobiles with inefficient pollution control devices. As Judge Levanthall pointed out, this might lead to a situation whereby denial of a suspension would result in greater total actual emissions of all cars in use than would be the case if a suspension were authorized. See *International Harvester Company, et al.* v. *Ruckelshaus*, 478 F.2d 615, 633–634 (February 20, 1973). If the Administrator is asked to authorize a suspension for HC and CO for model year 1977, and if the country is experiencing an energy crisis at the time a suspension is requested, the conferees would expect the Administrator to weigh carefully whether the application of the statutory standard would result in significant increase in fuel consumption.

The conference substitute amends section 202(b)(1)(B) of the Clean Air Act to establish a maximum emission standard for oxides of nitrogen of 2.0 grams per mile applicable nationwide to 1977 model year automobiles. This defers the previous statuory standard of 0.4 grams per mile of oxides of nitrogen until the 1978 model year. No administrative suspensions would be possible from either the 1977 or 1978 standard. While the 1977 model years standard is a maximum of 2.0 grams per mile nationwide, under the conference substitute California retains the right under section 209 of the Clean Air Act to seek a waiver for a more stringent standard.

The conferees are concerned with what may be unwarranted or, at least, untimely changes in EPA's certification test procedures for new automobile emissions. It is intended that uncertainty as to requirements for compliance with such standards be minimized. Any changes in test procedures shall be kept to an absolute minimum and should occur only where such changes improve instrumentation, reduce cost of testing or improve the reliability and validity of the test results.

The conference substitute does not contain the language of the House amendment providing for extensions of implementation plan deadlines in response to the changed standards and deadlines for automobile emission.

REPORT LANGUAGE: FUEL ECONOMY STUDY

The fuel economy study requirement was amended to provide for joint conduct of the study with the Department of Transportation. The conferees insisted on a joint study to eliminate duplication with current, ongoing fuel economy studies.

The conferees expect, of course, that any current DOT studies will be coordinated with this study to eliminate any potential duplication and minimize waste of funds.

At the same time, the conferees agree that EPA must be actively involved in any fuel economy analysis to assure consistency between the findings of the study and the statutory requirements for automobile emission reductions.

The conferees recognize that DOT has an equally important safety responsibility but does not have either established test procedures, testing facilities or the expertise on engine technology to perform an independent review.

The conferees expect this study to utilize EPA's established emission test procedures in order to avoid inconsistency in any subsequent legislative recommendation.

TITLE III—REPORTS AND STUDIES

Senate bill

Section 204(c) would direct the President to develop and implement incentives for the use of public transportation. In addition, the Federal share of expenditures for buses and rail cars from the Highway Trust Fund increased to 80 percent.

Section 210 of the Senate bill would require the President, within 90 days after enactment of the legislation, to promulgate a plan for the development of hydroelectric resources. Such plan would provide for expeditious completion of projects authorized by Congress and for the planning of other projects designed to utilize available hydroelectric resources, including tidal power.

Under section 211, within 30 days of enactment of the legislation, the Secretaries of the Interior and of Commerce would prepare and submit to Congress a comprehensive review of U.S. export policies for energy sources. The purpose of this study would be to determine any inconsistencies between national energy trade policies and domestic fuel conservation efforts.

Section 303 would direct the Secretary of the Treasury and the Director of the Cost of Living Council to provide the Congress with recommended economic incentives to encourage both individuals and industry to subscribe to the purposes of the Act. An analysis of actions needed to effect payment by producers and users of the full cost of producing incremental energy supplies would also be required.

Under the second paragraph of section 313, the President would review all rulings and regulations issued under the Economic Stabilization Act to determine if they are contributing to the shortage of materials associated with the production of energy supplies and equipment necessary to maintain and increase the production of coal, crude oil, and other fuels.

The results of this review would be submitted to the Congress within 30 days after the date of enactment of this legislation.

Section 316 would require the Department of Health, Education, and Welfare, in cooperation with the EPA, to conduct a study of the health effects of emissions of sulphur oxide to the air resulting from any conversion to burning coal pursuant to section 204(a) of the Act.

The sum of $5 million would be authorized to be appropriated for such a study.

Section 317 would require the Council of Economic Advisors, in cooperation with other agencies and departments, to submit an Emergency Energy Economic Impact Report to the Congress which must

include, but was not limited to, certain assessments of the impact of the energy shortage on employment, agriculture, various industries, commerce, and public services, as well as projections of its impact on the economy. A preliminary report would be filed thirty days after enactment and a final report no later than sixty days after enactment.

Section 402 would amend the Clean Air Act, as amended, to require the Administrator of the EPA to report to the Congress by May 1, 1974, on the extent to which any applicable State or local air pollution requirement or deadline may adversely affect the implementation of the National Energy Emergency Act or of the proposed amendments to the Clean Air Act.

House amendment

The provisions of section 104(d) of the House amendment parallel Section 313 of the Senate bill are almost the same, except that the responsibility for conducting the review would be vested in the President and the Administrator of the Federal Energy Administration.

Section 105(d) would require energy conservation plans to include proposals to provide for Federally sponsored incentives for the use of public transportation and Federal subsidies to maintain or reduce existing fares and additional expenses incurred because of increased service.

Section 121 of the House amendment is the same as the provision of Section 211 in the Senate bill, except that (1) the report under the House version would also cover foreign investment in production of energy sources and be included for the purpose of determining any inconsistencies between such investment and domestic conservation efforts, and (2) the report would have to be submitted within 90 days of enactment of the legislation rather than 30 days.

Under section 127 the Administrator would be required to prepare and submit within 90 days after enactment of the legislation a plan for encouraging the conversion of coal to crude oil and other liquid and gaseous hydrocarbons.

Section 207 would require the Administrator of the Environmental Protection Agency to report to the Congress by January 31, 1975, on the implementation of sections 201–205 of this title.

(Additional language to come.)

of Health, Education, and Welfare and the Environmental Protection Agency of the health effects of sulphur oxide conversions, except that the sum authorized was $2 million.

Section 206(a) would direct the Federal Energy Administration to conduct a study on energy conservation methods and to report the results to the Congress within six months of enactment. The study must address the energy conservation potential of restrictions on export of fuels and energy-intensive products (including balance of payments and foreign relations implications); federally sponsored incentives for public transit use and Federal authority to increase public transit facilities; alternative requirements, incentives, or disincentives for increasing recycling and resource recovery to reduce demands on energy (including a comparison of the economic and fuel impacts

of such recycling and resource recovery with the transportation and use of virgin materials); the costs and benefits of electrifying high traffic rail lines; and means for incentives or disincentives to decrease industrial use of energy.

Section 206(b) would require the Secretary of Transportation, after consulting with the Federal Energy Administrator, to submit to the Congress within 90 days of enactment an "Emergency Mass Transportation Assistance Plan" to expand and improve public mass transportation systems and encourage increased ridership. This plan must include, but is not limited to recommendations for: emergency temporary grants to assist States and local public bodies in payment of operating expenses for expanded urban mass transportation service; additional emergency assistance for the purchase of buses and rolling stock and the construction of fringe parking facilities; demonstration projects to determine feasibility of fare-free and low-fare urban mass transportation system; and the feasibility of providing tax incentives for users of urban mass transportation systems.

Section 206(d) would provide that no later than December 31, 1974, the Secretary of Transportation, in consultation with the Federal Energy Administrator, must also study and report to the Congress on the development of a high-speed ground transportation system between the cities of Tijuana, Mexico and Vancouver, British Columbia, Canada.

Section 208 would direct the President, within 90 days following enactment, to recommend to the Congress actions to be taken by the Executive and the Congress regarding siting of all types of energy producing facilities.

Section 209 would amend the Clean Air Act by directing the Administrator of EPA to conduct a study of the feasibility of establishing a fuel economy improvement standard of 20% for 1980 and subesquent model year new motor vehicles. A report on the study must be submitted to the Congress within 120 days after enactment, and the Administrator must consult with designated Federal agencies in the course of the performance of the study. The Administrator would be directed to fully examine the problems associated with obtaining a 20% improvement in fuel economy. The study must include technological problems, costs, relation to safety and emission standards as well as energy impact and enforcement. The agency would be authorized to obtain information for the study under its section 307(a) powers.

Conference substitute

Title III contains a number of provisions for studies to be conducted. Recognizing the merit of these provisions, the Conferees included them in this bill although they will not necessarily contribute to the relief of the immediate energy emergency.

The Conferees provided for three categories of studies and reports to be made to Congress. The first provides for immediate recommendations on means for near term increases in energy supply or reductions in energy consumption. The second set of studies and reports deal

with longer term methods for achieving these same objectives. The third class of reports essentially reserve to the Congress an oversight function on the implementation of this Act, by requiring reports from the President to the Congress every 60 days on the implementation and administration of this Act and the Emergency Petroleum Allocation Act of 1973, and an assessment of the results attained thereby.

The conferees recognize that increased use of mass transit is essential to energy conservation both in the short term and in the longer run. For this reason, the conferees wish to call attention to the adoption of several studies dealing with the major energy conservation measures. The first is a Senate-sponsored provision to provide for plans for Federal subsidies to mass transit systems for reduced fares and operating costs. The conferees believe that such incentives to greater use of mass transit coupled with reduced use of personal vehicles, can result in significant energy saving.

In addition, to reflect the need for improving mass transit in the longer run as well the conferees adopted a number of provisions providing for study of various mass transit systems.

In the first class of studies which are to be completed with a report submitted to Congress within 30 days after enactment of the Act, the conference substitute adopted the following studies:

From the Senate bill—

Of the rulings and regulations issued pursuant to the Economic Stabilization Act, by the Administrator of the FEEA on methods of energy conservation and production by all Federal agencies.

On specific incentives to increase energy supply and reduce consumption, by the Secretary of the Treasury and the Director of the Cost of Living Council.

On the impact of energy shortages on employment, by the Administrator of the FEEA.

From the House amendment:

A comprehensive review of United States exports and foreign investment policies by the Secretaries of the Interior and Commerce.

The second group of studies adopted in the Conference substitute, to be completed with a report submitted to Congress within 6 months from the date of enactment, include the following:

From the Senate bill:

From section 204(c) of the Senate bill, a plan to be submitted to the Congress for approval, to provide federally-sponsored incentives for increased use of mass transit, by the Administrator of the Federal Energy Emergency Administration.

Of the potential for further development of hydroelectric power resources, by the Administrator of Federal Energy Emergency Administration.

From Section 207(d) of methods for accelerated leasing of energy resources on public lands, by the Secretary of the Interior.

From the House amendment:

Of energy facility siting problem, by the Administrator of the Federal Energy Emergency Administration.

On the potential for conversion of coal to synthetic oil or gas, by the Administrator of the Federal Energy Emergency Administration.

HENRY M. JACKSON,
ALAN BIBLE,
LEE METCALF,
JENNINGS RANDOLPH,
EDMUND S. MUSKIE,
HOWARD H. BAKER, JR.,
ERNEST P. HOLLINGS,
ADLAI E. STEVENSON III,
TED STEVENS,
Managers on the Part of the Senate.

HARLEY O. STAGGERS,
TORBERT H. MACDONALD,
JOHN E. MOSS,
PAUL G. ROGERS,
JAMES T. BROYHILL,
JAMES F. HASTINGS,
Managers on the Part of the House.

SENATE DEBATE OF SECOND CONFERENCE REPORT, FEBRUARY 7, 1974

Unanimous-Consent Request

Mr. Mansfield. Mr. President, I make the following unanimous-consent request——

Mr. Robert C. Byrd. Mr. President, may we have order in the Senate?

The Acting President pro tempore. Senators will come to order. The Senator from Montana may continue.

Mr. Mansfield [continuing]. Which I think has been cleared all around.

Ordered, that on Tuesday, February 19, 1974, at 4 p.m., a vote occur on the motion to recommit the conference report on S. 2589.

That on Tuesday, February 19, 1974, the Senate convene at 10 a.m., and that after the recognition of the two leaders under the standing order, the conference report be laid before the Senate, and that the time until 12:30 p.m. be equally divided between and controlled by the Senator from Washington (Mr. Jackson) and the Senator from Arizona (Mr. Fannin), and the time from 2 p.m. to 4 p.m. on that day be similarly divided and controlled.

That if the conference report is not recommitted, a vote on the adoption of the conference report on S. 2589 follow immediately the vote on the motion to recommit.

That all points of order be excluded, so that the votes will occur on a motion to recommit and a motion to approve or disapprove the conference report.

The Acting President pro tempore. Is there objection?

Mr. Pastore. Mr. President, reserving the right to object, I have been on this floor now for about three-quarters of an hour. There has been a confab going on, sometimes above a whisper but still not audible to Members of the Senate. We have been told time and time again that the No. 1 priority in this country is the energy crisis. I do not know what the agreements are, and I do not know what the difficulties are in the conference report, but I think the people are entitled to know.

Why can we not have these motions determined today or tomorrow? Why do we have to wait until the 19th? If we can vote on these motions on the 19th, why can we not do it today, or why can we not do it tomorrow?

The people of this country want an answer. They want results, and I think the people are entitled to know what the difficulty is, why this postponement is taking place, and why we have to do it this way.

Mr. Mansfield. Mr. President, the Senator from Rhode Island raises some very valid points.

It was the hope of the leadership that we could finish with the conference report today or tomorrow at the latest. Unfortunately,

events have developed which indicated that that would not be possible to do.

Therefore, on the basis of the best judgment of the joint leadership, it was decided to agree to vote at a time certain rather than to have the debate dragged out today and tomorrow with perhaps no solution in sight. This way, we are certain at which time a vote will be taken, if the Senate agrees.

I would point out also that the Commerce Committee in the House yesterday tried to get a rule to take up the conference report but it was unable to do so. I would point out also that the House goes out tonight and will not be back before Wednesday next. I have been informed that, so far as the administration is concerned, they are not pushing for action today or tomorrow but, in effect, are in accord with the desire of certain members of the committee who did not sign the report, that this procedure be followed, if for no other reason than to give the membership a chance to understand in detail just what the conference report contains.

Mr. PASTORE. Mr. President——

Mr. JACKSON. Mr. President, will the Senator from Rhode Island yield?

Mr. PASTORE. Let me say, before Senator Jackson speaks, why can't we have a vote on the motion to recommit today or tomorrow to find out where we stand? Why do we have to wait until February 19 to find out. At that time, it might be recommitted—and then we will be in this hassle all over again?

I think we should determine now as to whether, on February 19, when we do come back we will vote on the conference report up or down, and not get ourselves once more into this mess having it recommitted and starting all over again.

Mr. JACKSON. May I just say to the Senate—especially to my good friend from Rhode Island—that we were prepared on our side to take it up, as we are taking it up now, to get a vote today. There is no reason why we cannot vote. But when we were confronted with a problem, with the clear indication that there would be no vote today or tomorrow, we had no other alternative but to work out the unanimous consent agreement that was agreed to.

Mr. PASTORE. Do you not think that the people of this country are entitled to know who is solving the energy crisis and who is not, and why we have to get into a filibuster over it?

Mr. JACKSON. Absolutely. Let me just say that there is one key issue on this conference report—forget about all the other things in it—there is one major issue, and that is whether the Senate will go on record and vote to roll back the prices of petroleum products. We have had an astronomical increase in the price of petroleum, both crude oil, and petroleum products. That is the issue. There are many things in this conference report, of course, and I have the assurance from the leadership on the minority side that the administration can get along under the provisions of this report—and I asked this specifically—because I am prepared to vote today. There is not that much to be discussed. It is an up and down question, really, on the issue of the price roll back. The leadership has agreed, and I have gone along with it on a realistic basis, that it is not possible to get a vote today or tomorrow. That is where we are.

Mr. HUGH SCOTT. The distinguished majority leader is quite right in making the point that the joint leadership was prepared to vote before we take this recess. I have had no word whatever from the administration in opposition to a vote as soon as we can. What we are discussing here, however, is the fact that objections were heard on both sides of the aisle to immediate consideration. We are moving as expeditiously as we can. We are proposing to vote on the second legislative day after today—that is, assuming that we do not come in tomorrow and that we take the recess and come in on February 18, debate on February 18, and vote on February 19. So we are agreeing to vote on the second legislative day. So, as the distinguished Senator from Rhode Island (Mr. Pastore) has pointed out, that is not perfect. He would like to see action now. I would be glad to see action now myself, so far as I am personally concerned, if the leadership were ready. But there have been objections. There have been a number of objections from both sides of the aisle. As in all cases, I must follow the precepts of my favorite Greek Menander, who said, "We live not as we were, but as we must."

Mr. PASTORE. That may be so. I am a little bit of a philosopher on my own, but the fact still remains that the fly in the ointment here is this agreement on a vote to recommit. What I am saying is that this is an eyewash for the people of this country. I do not understand why we have to wait to vote on February 19 and apparently that is satisfactory to the administration, the leadership, and to the members of the conference. Why can we not on that day, vote this conference report up or down, without going through the gymnastics of voting on a motion to recommit?

Let us assume that we wait until February 19 and then recommit it. Then where are we?

All I am saying is, we could dispose of this vote to recommit before we leave. If we have got to go back into conference, we can go back into conference next week without waiting until February 19.

Several Senators addressed the Chair.

Mr. AIKEN. I simply want to say that as of now there are 205 million people in this country who have been blaming either the Arab countries or the oil companies for their present predicament.

However, if we postpone action or even discussion until February 19, and in the meantime take several days vacation, the American people will stop blaming the Arab countries and the oil companies and they will blame Congress—and very properly so.

Mr. PASTORE. They are already doing that.

Mr. AIKEN. I think we should have a record vote on whether we want to postpone this or not.

Mr. JACKSON. I am for that.

Mr. FANNIN. Mr. President, we should go further than just talk about one section. There are 40 separate sections in the conference report. There are not more than 10 Senators who know what is in the bill. Why should we vote on something without knowing what we are voting on? Certainly we are entitled to know what is in the bill. Every Senator is entitled to know what is in the bill. It will take some time to discuss these 40 separate sections.

Mr. PASTORE. We have talked about this bill until the cows came home.

Mr. FANNIN. But now we have changed it.

Mr. PASTORE. We have filibustered this bill——

Mr. FANNIN. We wanted some time——

Mr. PASTORE. All right—why do you not tell us where the changes are?

Mr. FANNIN. We wanted some time to do that. It takes time to do that.

Mr. PASTORE. In the meantime, what do we do about gasoline?

Mr. FANNIN. This conference report is 103 pages long with 40 separate sections. You cannot memorize that overnight.

Mr. PASTORE. You cannot do it during your vacation, either. You cannot do it in the Florida sun. [Applause in the gallery.]

The PRESIDING OFFICER (Mr. Metzenbaum). May we have order in the galleries—and in the Chamber.

The Chair would point out to those in the galleries that they are guests of the Senate and any disorder may cause the galleries to be cleared.

Mr. JACKSON. Mr. President, first, let me say that I want it clearly understood, so far as our side is concerned, the Democrats handling the bill on the Senate side, that they are ready and prepared to vote on this today. There is no reason why we cannot finish it today, but, those on the other side disagree.

Mr. FANNIN. It is on both sides—let us not say that——

Mr. JACKSON. Those on our side——

Mr. FANNIN. Those who are handling the bill or those who are talking about the handling of the bill?

Mr. JACKSON. We came in here—we worked late last night. The staff prepared——

Mr. FANNIN. Whether it is the Senators who handled the bill or the Senators who did not, they are entitled to know what is in this bill.

Mr. JACKSON. We have today and tomorrow. Let us vote tomorrow. The point I want to make is that I think it should be understood now that the administration does need power to do certain things. That power is contained in this bill. Without it the administration cannot act effectively. Any postponement could affect that. I do not want the White House coming around here saying that, had Congress only acted, we would be able to deal with the queuing up at the gas stations. There is no authority in current law to set the hours of opening or the hours of closing at a gas station.

This is a matter of great concern in the country. There is one central issue here. Let us be candid. We have rolled back the price of unregulated domestic crude oil from a current high of $10.35 to a maximum of $7.09. In fact, we rolled it back to $5.25, and included in the rollback are all petroleum products, including propane; propane that has seen an astronomical rise in price that is really hurting the little folks of America.

The overriding issue is that those who are receiving these astronomical prices in the United States—it is bad enough what is being done abroad—will continue to until this bill becomes law. That is the issue. The oil industry will have to take a great deal of the responsibility for nationwide inflation, because these astronomical prices are digging away not just at the consumer, but at the free enterprise system itself, inflating it higher and higher.

Mr. PASTORE. The Senator keeps using the expression "the other side." Whom does he mean? Let the record show who he means.

Mr. JACKSON. Let me just say that all the Democrats who are conferees—that is why we stayed late—came in here prepared to vote today. I asked for the session to start at 10 a.m. so that we could finish. That is the record.

Mr. PASTORE. "The other side" would be the Republican side. Is that correct?

Mr. HUGH SCOTT. I do not think that is correct.

Mr. PASTORE. We keep using the words "the other side." What side are we talking about?

Mr. HUGH SCOTT. What is the Senator from Rhode Island talking about?

Mr. PASTORE. We have the Democratic side and the Republican side, and I understand that the Democrats are ready to vote now.

Mr. HUGH SCOTT. The Senator is not correct.

Mr. PASTORE. Let us find out. Let us have a vote.

Mr. HUGH SCOTT. The Senator can do what he wants. Personally, I am prepared to vote. I always have been prepared to vote, and I am not going to be included in any such statement.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. FANNIN. I object to voting on a recommital motion today, Mr. President. I do not object to the unanimous-consent request of the Senator from Montana (Mr. Mansfield).

It would be very unfair to have a vote, and I say there are not 10 Members of the Senate who will know what they are voting on. I feel that they should have the information available to them. I know that some of them are very interested in this matter, and they have called me, from the Democratic side, so I do not want it said that it is just the Republican side. I had two calls from the Democratic side.

Mr. PASTORE. What does that have to do with the vote to recommit? Why do we not dispose of that today or tomorrow?

Mr. FANNIN. It has a great deal to do with it. They want to know why they are voting for or against recommittal.

Mr. PASTORE. That is the crunch. You are waiting until February 19. You are lulling the people of this country into a false sense of security.

Mr. FANNIN. There is no way of saying it is going to delay anything at all, because the House did not get a rule. There is no determination that the House is going to act any quicker if we vote on Tuesday, the 19th, than if we vote today—no assurance whatsoever.

Mr. ALLEN. Mr. President, reserving the right to object—and I shall not object—I favor the adoption of the conference report. I am ready to vote on it now.

I oppose the motion that may or may not be made to send the bill back to conference. I am ready to vote on that. But I am persuaded that we can get quicker action on this bill and on this conference report by agreeing to the unanimous-consent request made by the distinguished majority leader, because we have experienced extended discussion on the bill. It would be no problem whatever to extend this discussion.

I believe it would serve the interests of the people for whom the distinguished Senator from Rhode Island speaks to agree on this time; because in the vast majority of cases where an agreement is made on a time for a vote, that takes time. I am persuaded that if this agree-

ment is not entered into, it will be well beyond the 19th of this month before we have a final vote.

I urge the distinguished Senator from Rhode Island not to insist on his objection.

Mr. PASTORE. The one crunch, as I have already pointed out, is the motion to recommit. What I am fearful of is that the people of this country are looking to Congress for a solution of this problem and we are not doing our job.

Thus far, the administration has not been able to solve it. They have been trying. They have a good man at the head of it—Mr. Simon. He came before our committee yesterday. I congratulated the man.

I said, "Mr. Simon, you are the right man at the right time to do the right job."

But the job has not been done, because I understand there are certain powers that the administration needs, but which it will not get until we pass the energy bill. The point I am making is this: In the unanimous-consent agreement that has been proposed, we are talking not only about the final vote at 4 o'clock; we are talking about a vote on a motion to recommit first. There is a motion to recommit the conference report and a motion on final passage—back to back. But the motion to recommit comes before the final motion to adopt the conference report.

We are telling the people of the country that we will solve this question on February 19. But what might happen on February 19, when the motion to recommit comes up, is that the report might be recommitted. Thus it will go back to conference, and we will start all over again.

If we are sincere, let us reject the motion to recommit and vote on the merits of the report, even if we have to do it on February 19.

Mr. ALLEN. Mr. President, I believe I still have the floor. I say to the Senator from Rhode Island that I believe it is only fair that those who saw the report only yesterday should have an opportunity to study it and make their points on the floor of the Senate. I do not believe it is asking too much to have this vote come at a time when arguments could be made on recommittal and could be made on the adoption of the report. I do not believe we will lose any time whatsoever.

The Senator from Rhode Island made the point, and stated it well, that this vote will show where we stand in the matter. I hope he will not throw any barrier in the way of the adoption of the conference report. If he insists on his objection, I think it will be a barrier to the adoption of the report. I hope he will withdraw his motion.

Mr. PASTORE. I merely served the right to object. I never said I would object. I think the people of the country should know what this is all about.

Mr. FANNIN. I agree that the people should know what this is about. So should Senators know what it is about. I am hopeful that we can have time for the Senate to study this proposal before a motion is made to recommit. I support the distinguished majority leader, but I would certainly object to a vote on a recommittal motion today because, as I said before, there are not 10 Members of the Senate today that have any idea what the report contains. There are 40 separate sections. I simply hope we will give Senators—some of them not here today, and

will not be here today—the opportunity to determine, after study, whether they want to vote to recommit or not.

Mr. ALLEN. Mr. President, reserving the right to object, I would hope that after this agreement is entered into—and I believe it will be entered into—a time would be set apart this morning for a colloquy on the report, so that Senators may question the distinguished Senator from Washington (Mr. Jackson).

Mr. MANSFIELD. Does the Senator mean a limited time?

Mr. ALLEN. No; simply that time be allowed us to discuss the report. I think we will discuss it at some length today.

Mr. MUSKIE. Mr. President, I must say to my distinguished friend from Arizona that I am puzzled by this reluctance to move to a decision on this legislation. I was a member of this conference in December and I was a member of the conference this month.

Because of my responsibility with respect to the environmental matters contained in the report I was advised by the White House, by Mr. Simon, that we were going to proceed expeditiously, not this month but in December, and I was urged to resolve quickly whatever doubts I had about the matters for which I was responsible, because of the need for urgent action. We met that responsibility, putting doubts behind us.

Mr. FANNIN. Mr. President, will the Senator yield?

Mr. MUSKIE. May I finish the point?

Mr. FANNIN. I want to praise the Senator.

Mr. MUSKIE. May I finish, and then I will be happy to yield to the Senator.

Mr. FANNIN. I want also to comment——

Mr. MUSKIE. I will give the Senator the opportunity.

But I must say I am disturbed and concerned. My primary responsibility was not with respect to the energy conservation provisions of the report. But I was given to believe that under the urging of the administration Senators were proceeding with a sense of urgency to resolve a similar sense of urgency to the environmental matters.

Now, there are changes in environmental policy in this bill that merit long and deliberate consideration; matters that were not even considered on the floor of the Senate but were included in the House version of the bill. I was willing to consider these matters, because Mr. Simon told us he needed this authority and asked, would I not please resolve my doubts—in the interest of urgency.

Now, if we are going to become involved in a stretched out, delaying process, I may be tempted to reconsider my view with respect to the actions taken in regard to environmental matters.

Is the authority contained in the conference report eventually needed by Mr. Simon or not? That is a question I answered affirmatively in the interest of reaching a decision.

The Senator said there are 40-odd provisions of the bill. The Senator knows as well as I know that there is only one issue that prompts this delay and that is the question of whether or not there should be a rollback in prices.

Mr. FANNIN. Will the Senator yield?

Mr. MUSKIE. May I finish?

If that provision were not in the conference report, we would pass this conference report in the Senate either today or tomorrow, and the

Senator knows that. So the question is, whether on that issue we have had enough time to make up our minds. It is a legitimate question, and I know the Senator's views on it, because he has expressed them eloquently and at length in conference. He and I disagree; but the point is not whether we disagree. I submit we have had as much time to resolve that question as I gave myself to resolve my doubts about the environmental matters in this report.

I submit, and I do so only to direct my remarks to the White House, that I am having reservations about the urgency of this legislation. I am having reservations about the need to take the action we have recommended to both Houses with respect to environmental matters, because the administration does not exhibit the sense of urgency it asked me to demonstrate with regard to my responsibility in the conference.

So I say to the Senator that I am deeply disappointed—deeply disappointed—that we are now being asked and urged to drag our feet.

If the matter is truly a national emergency, every Senator has a responsibility to collapse his timetable, to focus on this matter, to brush everything else aside, and make up his mind about whether he favors a price rollback or not—and make up his mind this week, not 10 days from now.

If the matter is not that urgent I doubt there is anything urgent in this bill.

Now, I yield.

Mr. FANNIN. Mr. President, I am very pleased to have the chance to respond. In the first place there is no assurance that if we acted today this legislation would be approved before the 19th; there is no assurance whatever.

Mr. MUSKIE. We do not need that assurance. All we need is added momentum.

Mr. FANNIN. May I explain my position?

Mr. MUSKIE. Certainly.

Mr. FANNIN. If the Senator does not want to yield to me, that is his privilege.

Mr. MUSKIE. The Senator has the floor.

Mr. FANNIN. There are other objections that I have to the measure, and I have offered amendments. So do not say it is just one section, because that is not correct.

The Senator from Maine (Mr. Muskie) was there at the time—he worked hard and I commend him for it. He said he would like to have a chance to explain the changes made.

Mr. MUSKIE. I can do it in 30 minutes.

Mr. FANNIN. Fine. Many Senators are not here today, and they would not have the opportunity to hear the Senator. As far as what has been said that we gave the Administrator what he wanted, that is not correct. He came before us; he made a request; we turned him down. I did not turn him down. A majority of the conferees voted against his every suggestion. There is no reason to say it is going to be acted on earlier if we act in the next 5 minutes. It just is not right.

So I hope the Senator takes into consideration that there are at least 90 Senators who did not have the privilege—89 to be specific, because there are 11 on the conference committee—that did not have the opportunity to look over this measure in detail.

Many changes have been made. So I feel it is very essential, because more than one section is involved, that we have a thorough study of what is in this particular legislation.

Most of the Members—I would say all the Members—did not have an opportunity to look at this until they came to the Chamber this morning. Here we are talking about acting on it today and it is a very complex piece of legislation.

I hope the distinguished Senator from Maine will realize he is being fair and equitable without hurting anyone by taking the time necessary to explain this bill to his colleagues.

Mr. MUSKIE. I appreciate the Senator's explanation, but I am not impressed, because the rhetoric he is using is the rhetoric of delay. This rhetoric was just as available to me in conference, but I did not choose to use it, because I was urged to be expeditious. The Senator has chosen to use it. It is his privilege, but in exercising that privilege he undermines my confidence in the urgency of this legislation.

Nothing the Senator can say can disabuse me of my disappointment or my interpretation of what he is doing.

I urge the Senator to reconsider, because I think delay—delay for reasons that seem sound to him—is a temptation to delay to others who have other reservations about the bill. If the Senator wants to risk undermining the whole package, which has been carefully, delicately, and sensitively put together, delay is the way to do it, and I say it with all the sincerity at my command. Delay is the wrong instrument for the administration to be using today.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield.

Mr. MANSFIELD. Mr. President, I withdraw my request.

Mr. FANNIN. Mr. President, will the Senator yield in connection with the statement that I want to delay the legislation? Why does the Senator select one Senator when many want it? At least 90 Senators do not know what is in the report.

Mr. MUSKIE. If I want to mount an army of Senators and Congressmen to promote delay on issues that the Senator does not question in this report, if I want to mobilize an army to delay, I can do it, and somebody else can. The Senator is using the rhetoric of delay. I have heard the rhetoric of delay on the floor of the Senate for 16 years. I recognize it when it is used. I am sure the Senator recognizes it when it is used. The Senator knows as well as I that if the White House were interested in a decision on this bill today or tomorrow, we could get it. That is my conviction. I sense delay in everything the Senator has said. That is not to attack his integrity or sincerity, or anything of the sort, but the Senator is talking about deliberate and intentional delay, which would promote the forces which are out to kill this conference report.

I shall yield to the Senator from West Virginia, but first I yield to the Senator from Washington.

Mr. JACKSON. Mr. President, I call up the report of the committee of conference on S. 2589, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2589) to declare by congressional action

a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

Mr. MUSKIE. Mr. President, I yield to the distinguished Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

SENATOR RANDOLPH URGES PROMPT ACTION ON ENERGY EMERGENCY CONFERENCE REPORT

Mr. RANDOLPH. Mr. President, I would like, before speaking very briefly, to know which Senators signed the conference report.

The PRESIDING OFFICER. The clerk will please state the names of the Senators who signed the conference report.

The legislative clerk read the following names of Senators who signed the conference report: Senators Jackson, Bible, Metcalf, Randolph, Muskie, Baker, Hollings, Stevenson, and Stevens.

Mr. RANDOLPH. I had hoped, Mr. President, that the Senate of the United States could be, as I see it, responsible to the people of this country. They have every right to expect that a conference report of this kind, in which there has been an earnest attempt to cope with the energy emergency, would be acted on before any recess of this body takes place, whether we are to leave at the close of business tomorrow, or some other date to be determined by the Senate.

I would feel that throughout America men and women by the millions who are being adversely affected by the continuing crisis in energy—which I believe will be abated by the Energy Emergency Act—and I repeat this for the third time—have a right to expect that we act and that we act now.

I am not critical of the viewpoint of any Member of this body. But what excuse, what plausible reason can be given to the citizens of this Republic when the Senate and/or the House, both bodies, fail to come to grips with this matter and suggest that some 10 days or 2 weeks later we will come back to it, we will talk about it, and then we may do something?

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate while the Senator is addressing the Senate? May we clear the well? Will the Chair require attachés and the aides to take seats and Senators who are not addressing the Senate, to take their seats.

The PRESIDING OFFICER. Senators and aides will take their seats.

Mr. RANDOLPH. Mr. President, I thank the able majority whip.

There were 3 days of consideration of this report by the conferees. Hour after hour the conferees addressed themselves to the problems that we as a Congress should be attending to now, not later. I say, in good humor and good purpose, it is not only difficult for me to understand, but frankly, I do not understand why we cannot proceed to the business at hand. I have every confidence in the Senator from Washington. I have every confidence in the Senator from Arizona, the

chairman, and the ranking minority member of the Interior and Insular Affairs Committee. I have every confidence in my colleagues who were conferees, those who signed the conference report, that we can adequately explain the actions that have been taken. Then, Mr. President, we would either vote the conference up or vote the conference report down.

It seems to me that we fail, in considerable degree, to serve the people of this country if we delay the action which can be taken in this body. It is not for us to speak for the other body, but in the Senate, this matter can be considered with adequate debate, lasting, if necessary, late into the evening tonight, beginning early tomorrow and running perhaps late into tomorrow, in order to dispose of the conference report.

Mr. President, I close by saying that I do not attribute to any Member of this body a desire to fail, in his opinion, to given the consideration to this matter which he believes it should have. However, those who would delay consideration of this matter were conferees on the part of the Senate. They were there hour after hour. They heard the discussions and participated, often helpfully, in the consolidation of our thoughts. Changes were even made. Those matters were thoroughly discussed and evaluated. However, after all of that work has been done, they say, "We are leaving Washington. We are going back to our States or wherever we have made arrangements to travel. For this period of time we will continue to have uncertainty compounded." That is not proper. However, that is what will happen.

Mr President, I must emphasize that in what I have just said, I am in no way assuming the role of a carping critic. I am only saying that at this time I wanted to speak these words slowly and earnestly, believing that in so doing I expressed not only my conviction, but also, I think, the opinion of those who, if they could speak to us in voices that could be heard, would say that we should be going about our business and continuing to discuss the conference report today and tomorrow, and for as many hours as necessary.

Why could we not meet until 9 o'clock tonight? Why could we not come in early tomorrow and meet until late tomorrow evening if necessary?

I hope that the calm words which I have spoken will help to resolve this matter. They are not spoken in any way to lecture someone, because certainly that is not my purpose. However, I do believe, I repeat, that we have an obligation and we will fail in that obligation to ourselves as a body and to the country as a whole if we do not act, either affirmatively or negatively, on the conference report by a rollcall vote of the Members of this body after adequate debate.

I thank the Senator from Maine for giving me this opportunity to speak. I might say that in the 15 years that I have been a Member of the Senate, I doubt that I have ever even approached the position of offering criticism of the membership of this body or of any Member of this body. And that has not been my intention as I have talked this morning.

Mr. MUSKIE. Mr. President, I thank my good friend, the chairman of the Public Works Committee, the Senator from West Virginia (Mr. Randolph), for his highly appropriate remarks and for his mention of my own concept of what we need to do.

What I have said this morning is said more in sadness than in anger. However, I want to call to the attention of the Senator from Arizona a few additional points with respect to these problems.

I have a great deal of respect for the Senator from Wyoming and for the Senator from Arizona. I have a great deal of respect for Mr. Simon. As a matter of fact, I have taken what has been said to me in the course of the last few minutes in all good faith. I think that Mr. Simon is doing a very difficult job. He is doing his best to get the facts, and he is doing his best to convey the facts to the American people.

Mr. President, separately today, I am going to have printed in the Record a speech Mr. Simon made last Tuesday to the National Press Club. The thrust of his remarks was an expression of his determination to get the facts to the press and to the public, because, as he sees it, one of his greatest challenges is the lack of credibility in all our institutions. I read this language which suggests his sense of urgency:

> Within 24 hours of our receiving your requests for information, we will issue an acknowledgement or grant the requests. Within 10 working days I personally guarantee that you will get the information you seek or have the opportunity of appealing, and appeals will be ruled upon in no more than 10 days.

That is the kind of action that Mr. Simon is proposing to get the information to the American people and to mobilize our Nation's energies to deal with this problem.

So, I am for Mr. Simon. I have been for him, and I think that this matter requires a sense of urgency.

May I say to my good friend that there are items in this conference report dealing with energy with respect to automobile emissions that do not need to be dealt with on an emergency basis. In our Senate Committee on Public Works, we have already planned and scheduled hearings to deal with some of these issues this year, either in the late spring, early summer, or fall. Testimony will be scheduled. Then we will act.

To the unhappiness of many people, we dealt with some of these issues in the conference, notwithstanding the fact that they were not dealt with on the Senate floor.

When a Senator says to me that there are matters in this report that deserve deliberate consideration and discussion, I tell him that I agree. However, with respect to my particular responsibility, we resolved those issues quickly and expeditiously because Mr. Simon told us—and I believed him—that there was a crisis and a sense of urgency.

There is great doubt around the country that there is a crisis. There is a widespread feeling that the shortage is contrived. Mr. Simon does not believe that. He tells us with all earnestness and all the urgency that he can command that there is a real crisis and that we must deal with it quickly.

It was for that reason that we acted quickly in the conference on the matters under my jurisdiction. It is for that reason that we must act expeditiously now.

May I say to the Senator from Arizona and to the Senator from Wyoming that I intended to present the environmental portions of the conference report today.

I will not do so today because it seems to me that the whole report is in doubt. At this point, it is left hanging.

I will be available to answer questions about the matter. I will not absent myself. If there are Senators on the floor who want to discuss those portions of the conference report, I will be available. However, I will not present them with a recommendation for adoption today, because if the distinguished Senator from Arizona feels he is entitled to more time to consider these issues, if he feels that other Senators are entitled to more time in which to discuss these issues, then I say to the Senator with all due respect that I am entitled to more time in which to discuss these matters. It cannot be a one-way street.

We have had ample time in the conference to discuss these issues. The Senator's case has been made appropriately and well. He raised questions, questions that I think create doubt on all sides. But the question today is whether this is such an urgent matter for action and whether we should collapse our time frames to get to a disposition of the matter.

If the Senator urges, and is in a position to implement his feeling, that we need more time, I say to the Senator I am going to take more time.

Mr. FANNIN. Mr. President, I would like to clarify a situation in which I may have been misunderstood.

I supported the Mansfield unanimous-consent request, and it may have been misconstrued, when I was objecting as to what the Senator from Rhode Island (Mr. Pastore) was discussing, that I was objecting to Senator Mansfield's unanimous-consent request. I want the record to be clear that I support the unanimous-consent proposal of the distinguished majority leader, and appreciate very much that he made that unanimous-consent request, which was not accepted.

Mr. President, we have before us very important legislation regarding what can be done to assist in solving the energy problem, but unfortunately I do not feel that we have taken the action that is necessary to accomplish that objective, that is, to obtain additional supplies of petroleum products domestically, and to provide the incentives that will accomplish that particular need.

We have a real sense of urgency, as has been expressed. I agree, but urgency must never replace thorough deliberation on legislation that will touch each and every one of us in this country.

Let us use the necessary time to explain this report, and make sure this is legislation that will cure our problems and not aggravate them.

We feel that more than 90 Senators have not had a sufficient opportunity to digest the legislation—or approximately 90; there were 11 members of the conference committee, though not all the members of the conference committee were in attendance. We did spend considerable time on the discussions, but we also tried to give thorough consideration to the witnesses who came before us on this particular measure.

On February 2, a Saturday, hearings were held on this energy bill, at a time when we had witnesses from various schools, witnesses from industry, and economists of great renown. We had Dr. John H. Lichtblau, executive director of the Petroleum Industry Research Foundation of New York; we had Dr. Thomas Stauffer, research associate, Center for Middle Eastern Studies of Harvard University; we had Mr. Warren Davis, chief economist, Gulf Oil Corp., here in Washington; and we had Mr. John Emerson, energy economist of the Chase Manhattan Bank of New York.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, having discussed this request with the distinguished Senator from Arizona (Mr. Fannin), that he be permitted to yield at this time to the distinguished Senator from Maine (Mr. Muskie), that Mr. Muskie be permitted to speak out of order for not to exceed 30 minutes, notwithstanding the Pastore rule of germaneness, that the distinguished Senator from Arizona not lose his right to the floor, and further that the statement of the distinguished Senator from Arizona not show an interruption in the Record.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, first of all I thank my distinguished friend from Arizona for yielding for this purpose. This is the same general subject area which I seek to address, but it is not relevant to the conference report.

Mr. President, the foreign ministers of the world's major oil consuming nations are to meet in Washington next Monday at the invitation of our Government. Their agenda calls for action on world energy problems. Their meeting is of great importance.

Either it will prove a short-lived, frustrating exercise in crisis diplomacy, or it will make a belated start on the creation of a common policy toward the common problems of resource scarcity. The early indications are not encouraging.

In the month since the President issued invitations to the conference, evidence has mounted of sharp divergence between the aims of the United States and those of our Canadian, European, and Japanese allies. Officials here informed the Canadian Energy Minister last week that our main objective is to weld a common front against high oil prices—even to roll them back.

The Common Market countries, in defining their position Tuesday, specifically rejected any thought of confrontation between the oil consumer and producer nations. Instead, they prefer to expand the international dialog on energy to include both the countries which dominate the supply of crude oil and the developing nations which need fuel they can afford as badly as the industrialized world.

These aims need not be mutually contradictory. But the advance consultation necessary to reconcile them has not taken place. And, lacking such essential, ongoing contacts, historic partners have allowed lack of leadership and the contagion of self-interest to drive them into attitudes of rivalry and suspicion.

In the short months since Middle Eastern oil suppliers initiated the twin tactics of restricting production and inflating price, each consumer country has gone its own competitive way. European and Japanese negotiators, for example, have reportedly already concluded $6 billion worth of bilateral agreements with the oil producing nations, bartering arms, technology and promises of industrial development assistance for guarantees of petroleum.

This competition—including another $5 billion in separate, similar negotiations said to be underway—strengthens the producers' bargaining position as surely as it weakens the political and economic cohesion of the industrial democracies. The Washington conference must make its first goal the essential one of curtailing such beggar-thy-neighbor policies.

But there can be little hope of the foreign ministers' agreeing to even a policy of mutual restraint unless America's own practices are coordinated with our rhetoric about international cooperation. As host to the conference—and as the most powerful and temporarily best-placed of the consumer nations—we have a special responsibility to set an example others can trust and follow.

Until now, however, we have acted preoccupied and uncertain, substituting contradictory expedients for coherent policy. In the style our diplomacy and the substance of our action, we have undercut our sincere calls for concerted action with postures that serve narrow, nationalistic goals.

While all of us admire the negotiating expertise of Secretary Kissinger, we know that he would agree that his heavy schedule of travel tends to interfere with the patient discussions allies must have to prevent minor misunderstandings from becoming major obstacles to coordination. Such talks are hard to hold in airport waiting rooms, as they recently were with the British Foreign Minister. And the French compliment to Dr. Kissinger's gift for "happy improvisation" is only a barbed reminder that "muddling through" one emergency only defers conflicts; it does not defuse them.

But even if we had talked less about consultation and practiced it more, our own initiatives for dealing with energy problems would have raised grave doubts among our partners. No matter what we preach abroad, Project Independence defines our policy at home primarily in terms of pursuing energy self-sufficiency, rather than emphasizing the broader goal of international cooperation. And the recently reported, secret Justice Department waiver of antitrust action against joint bargaining activity by our major oil companies can only suggest that we are unleashing our private buyers to compete for fuel in the marketplace against the governments of our allies.

If we mean to go it alone—the message France has already read from the present shape of Project Independence—we can not realistically expect others to honor our calls for concerted action. Yet the President's energy message of January 23 made no mention of any hopes for an international approach to the problems the whole world faces. It emphasized only the important—but inward-looking—goals of developing alternative energy sources within the United States, of conserving essential fuel for ourselves, of expanding our research and development efforts so that by 1980, in the President's words:

> We are no longer dependent to any significant extent upon potentially insecure foreign supplies of energy.

By contrast, the agenda proposed by Secretary Kissinger for the foreign ministers' conference envisages discussions on joint action by the oil-consuming nations on all the goals we set for ourselves in Project Independence, on international monetary and economic policy to deal with the consequences of the exorbitant oil prices and on plans for sharing and allocating fuel during emergencies.

That last item is especially puzzling.

Are we thinking of pooling our domestic energy supplies—now inadequate for our own needs—with those of other nations even more dependent than we on imported fuel? If such sacrifices are under consideration, the American people should be told of them. They have not been. Project Independence points in a much different direction, and

the emphasis we have given it must surely make our allies question our willingness to consider even emergency fuel sharing proposals.

In fact, Project Independence need not contradict our efforts to secure international cooperation. At one level, it does add to the weight we carry in negotiations with the oil-producing states. At another—if we succeed in reducing U.S. demand for imported fuel—it frees resources we might have required for the use of others.

But unless it is refashioned to reflect the realities of our interdependent world, this policy will discourage concerted action. Our goal is not just one of freeing ourselves from reliance on "potentially insecure foreign supplies." Our aim is to insure a stable worldwide flow of energy supplies and, beyond that, of the supplies of all the raw materials the entire planet needs.

It is true that America is potentially in a better position to supply its own energy requirements than any other Western industrial nation. But we must already rely on others for more than 80 percent of the chromium, manganese, bauxite, tin, and nickel our power converts to manufactured products. And it is estimated that by the end of the century we will be importing more than half the tungsten, zinc, copper, iron, lead, and sulfur we will need.

All the self-generated energy in the world will be wasted if we lack the raw materials to convert to finished goods. And if we are unable now to limit the power of one monopoly cartel—the oil producers—to hold the industrial world to political and economic ransom, our failure can only invite the suppliers of other essential resources to adopt similar tactics in the near future.

Supply, of course, is simply one edge of the sword. Price is the other. And in that field, the interests of the buyers and the sellers converge. As Dr. Kissinger wisely said of the producers: "It cannot be in their interest to bring about a worldwide depression."

First, perhaps, the inflated prices will shake the economic structures of the most advanced countries, those whose prosperity, until now, has been built on the availability of cheap fuel and whose oil bills are likely to rise by $50 billion in 1974.

Second, the economies of the developing nations are equally exposed to calamity. To keep their fuel bills from increasing by $10 billion this year, as projected, they will have to curtail oil imports and forego essential growth.

Finally, of course, the suppliers might come to discover that they have not so much priced themselves out of the market as priced the markets into such turbulence that they collapse. Oil that no one can buy is of no use to those who would sell it.

If the first requirement of the foreign ministers' conference is a common policy to avert such disaster by suppressing the competitive rush to strike short-term oil bargains in the Middle East, it is nevertheless clear that agreement on such policy must be based on a broader consensus among the consumers. Joint action to develop alternative energy sources will surely be part of any long-run effort, but if such commitments are seen primarily as an immediate bargaining counterweight against the suppliers, they are likely to encourage a confrontation mentality and a fierce push by the suppliers to get the most now for what they have.

So the foundation for a concerted policy must be the recognition by all involved that cooperative effort cannot be limited to industrial nations. It must be a global aim.

The proper focus for our efforts should be the broadest one: Conservation of all the world's energy resources, not just our own; and development of alternative energy supplies for all users, not just ourselves. Such a coordinated approach assures that we—and others—recognize that the immediate shortage of supply are simply the precursors of a new world condition.

The abundance from which we have so long profited is past. Global scarcity is the new reality to which we must adapt.

On a shrinking planet, self-sufficiency is a delusion. The remedy for problems that poison the hopes of rich and poor alike is to be found in multilateral solutions that give hope to rich and poor alike.

Next week's conference was first announced as a prelude to a further meeting with the oil producers. The American aim, apparently, was to build a solid, joint bargaining position from which to negotiate supply guarantees and price reductions.

By itself, however, that goal would seem to be unrealizable. In any event, it is too narrow. The Common Market position—avoidance of confrontation and promotion of the role of both the producing and developing countries "in reinforcing international cooperation"—appears to offer a more hopeful, although far more complex approach. The fact is that the interest of the industrialized world in harmonizing relations with oil suppliers runs parallel to the interest of all nations in building a healthy international economic order.

Such progress is only possible through the slow, painstaking adjustment of competing national interests in international negotiations. It will have to be founded in new, liberal trade arrangements between the developing countries and those they tend to see as exploiters of their relative weakness. It will have to be cemented by monetary agreements that guarantee against sudden dislocations. It will have to be molded by the leadership of the advanced nations, prepared to concede that their own survival and prosperity depend inexorably on the survival and prosperity of their poorer neighbors.

To give that leadership should be America's greatest goal. Instead of Project Independence, Project Interdependence should be our first priority, for interdepedence is the overriding and overwhelming reality of our era.

Judging by his statement Wednesday about America's "profound interest in world cooperative relationships," Secretary Kissinger appears to recognize this reality. Based on that recognition, I am hopeful that he will be able to reconcile America's desire for rapid, decisive action in the energy crisis with our allies' policy of giving both the oil-producing and the developing nations key roles in building a new international consensus. For the conference that opens here Monday can begin the hard, long search for a way out of the immediate crisis and toward new, equitable, reliable international relationships. If it accomplishes only that—a beginning—it will have been well worthwhile.

But such a beginning must also put an end to American practices that divide us from our closest partners. It must reestablish a diplomacy based less on ingenuity and improvisation in fighting fires and

more on policies of mutual interest and restraint which will insulate us against fresh outbreaks of fire.

Looking back on the history of the democracies between the two world wars, Winston Churchill wrote of the "absolute need of a broad path of international action pursued by many states in common across the years, irrespective of the ebb and flow of national policies."

We have now what may be our best, if not our last, opportunity to find that "broad path" again. If America fails now to open the way to international action, we will tumble over ourselves into the dead end of international disorder.

Mr. President, I yield back the remainder of my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JACKSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arizona has the floor.

Mr. FANNIN. Mr. President, I am glad to yield to the Senator from Washington.

Mr. JACKSON. Mr. President, the Senate has already had before it for some time the bulk of the conference report. Very few substantive changes have been made in the report since the last time it was considered by the Senate. I will briefly summarize the major changes which were made in the most recent conference:

First, since there has been quite some delay in the passage of this bill since it was first considered, it was necessary to adjust the timetable for congressional approval of energy conservation plans as set forth in **section 105**. Original benchmark dates were March 1, 1974, and July 1, 1974. Because March 1 is now so close, the conferees felt it was only fair to the executive branch to relax the timetable. Accordingly, March 15 has been substituted for March 1, and September 1 for July 1.

Sections 110 and 129 previously required the President to set prices for petroleum products so as to avoid windfall profits, and provided for petition for refund of prices which were found by a renegotiation board to have resulted in excess profits. The new **section 110** continues to recognize the need for judicious pricing of petroleum and petroleum products. As a commodity which affects virtually every consumer and every industry, rampant price increases for oil will only result in soaring inflation. In most instances, there is no substitute for petroleum—for transportation, for petrochemicals, to name but two such instances. So people are being forced to accept higher prices: small businesses, low income consumers, independent businessmen and truckers must absorb the rising cost of crude. The conferees, after much deliberation, provided in **section 110** that a ceiling be established for petroleum prices, to reflect more truly the actual value of petroleum, rather than current cartel levels inflated and uncontrolled levels. **Section 110** as it now stands provides for ceiling prices to be established for all crude oil. The basic price is $5.25 per barrel of crude oil. This price could be increased, if proper findings are made to $7.09 a barrel. The bill also provides for a dollar-for-dollar passthrough of any price reductions resulting from such ceilings, to be reflected fully and proportionally in the price of petroleum products. Mr. President, I think

section 110 as now written is a good and workable provision and I would strongly urge its adoption by my colleagues.

Section 116, which provides for grants to States for increased unemployment coverage, has been broadened. The section as it now stands provides for compensation to be provided to persons adversely affected by the energy emergency—for example, by energy emergency allocation programs, conservation measures, energy shortages, and so forth. At a time when we are told to expect unemployment as high as 6 to 8 percent, 3 percent of which will be directly attributable to energy shortages, we must make provisions to avoid a major recession. Already, hundreds of thousands of workers in the auto and chemical industries are out of work. The conference bill, therefore, provides for $500,000,000 to be available to the States for unemployment compensation for the duration of the bill.

Section 117 has been amended to provide greater restrictions on the use of Government limousines and chauffeurs. This revised conference version is far closer to the original Senate passed version, and I think provides for a good example to be set for the American people by their leaders.

A new **section 130** has been added, to provide for low-interest loans to homeowners and small business, for the installation of energy conserving devices in their homes and places of business: Covered items under this provision would include storm windows, insulation, solar heating devices, and so forth. In adopting this provision the conferees restored the original Senate-passed language, recognizing that if the American people are being asked to make sacrifices in this time of crisis, they should be given the greatest assistance possible in doing so.

Mr. President, there are also amendments which were made to title II, but I will ask my distinguished colleague from Maine, Senator Muskie, to address those provisions at the appropriate time.

Mr. President, I strongly urge my colleagues to adopt this revised conference report. I think it is a good bill, a workable bill, and urgently needed. As my distinguished colleague, the senior Senator from Arizona, said in this Chamber earlier this week, the administration needs this legislation if they are to deal adequately with the worsening crisis. If Congress fails this time to approve the conference report, the responsibility for the consequent dislocations in our economy will rest on our shoulders. We can no longer delay, no longer shirk our duty to our constituents, to bring a bit of order and a greater certainty into their daily lives.

Mr. President, I ask unanimous consent, if it is agreeable to the distinguished Senator from Arizona, to yield to the distinguished Senator from West Virginia (Mr. Randolph) for a question.

Mr. FANNIN. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RANDOLPH. Mr. President, in reference to **section 107** of the conference report, dealing with the allocation of material, is it the understanding of the chairman that this provision also goes to the matter of petrochemicals?

Mr. JACKSON. Yes, **section 107(c)** specifically addresses the matter of petrochemicals.

Mr. RANDOLPH. That was my understanding.

Mr. JACKSON. The Senator is correct.

Mr. RANDOLPH. I wanted to make certain that these vital feedstocks were covered by the allocation provision.

Mr. JACKSON. Needless to say, this is a very urgent area of economic concern to the Nation, because petrochemicals have become a basic feedstock to the economy. We are perhaps more familiar with steel, aluminum, copper, and the other metal industries as basic industries; but petrochemicals have come to play an equally vital part in the economic growth of the Nation, contributing to the manufacture of so many things that go into the gross national product of the Nation.

Mr. RANDOLPH. The Senator is correct. The State of West Virginia has a very substantial petrochemical industry. I am aware of the problems in that industry, which is affected by the energy crisis.

I desire to emphasize, as we have in the past in the conference and during the discussion on the floor, the viability of the conference report on this subject.

Mr. JACKSON. I must say—and I want to be properly understood in connection with the pricing of petrochemicals, that the equitable pricing of petrochemicals is provided for under the term "refined petroleum products of crude oil" in section 110 of the conference report.

Mr. RANDOLPH. There is need for a further clarification on the conference report, which I would ask the able chairman to address at this time.

There is need for clarification of a point regarding section 106 of the conference report.

Coal conversion into synthetic fuels offers a potential for significant savings in petroleum product usage. This is discussed in some depth in the conference report. Increased coal usage and synthetic fuels from coal offer significant opportunities for relieving present shortages.

With regard to existing facilities as well as possible longer term problems with regard to plants now in the planning phase. Using new technologies, such coal byproducts as synthetic gas and oil and solvent refined coal, major strides can be taken to meet our energy needs consistent with long-term environmental policies.

I would like to ask the floor manager for this conference report, Senator Jackson, if he does not agree that the intent of the conferees was to include these new technologies within the term "coal byproducts."

Mr. JACKSON. By including the term "coal byproducts" in the conference report as a possible alternative fuel to oil and natural gas, it was understood that the term "byproducts" would not be narrowly construed, but rather would include such coal derivatives as synthetic gas and oil from coal, or solvent refined coal. The latter is particularly attractive for use in powerplants as it can readily be substituted for high sulfur coal or for oil. It is clearly the intent of the conferees, in pursuing the national goal of energy self-sufficiency, not to preclude the use of any possible alternative sources of energy which could bring us closer to that goal.

Mr. RANDOLPH. I recognize that my colleague has also asked a question. I do have a commitment I should like to keep in a few minutes. I am wondering whether I might be permitted, if it would not disarrange the schedule of the Senator from Louisiana (Mr. Johnston), to comment on an additional section of the conference report. The Senator from Arizona (Mr. Fannin) suggested that I might be able to do it now.

Mr. JACKSON. The Senator from Wyoming (Mr. Hansen) has control of the time.

Mr. RANDOLPH. I had asked Senator Fanning for an opportunity to speak for 5 or 6 minutes, and he indicated that that time might be yielded to me. I did not realize that he is not in his seat at this time; but when I asked him, he felt that that could be done. I have no desire to press the point, except because of another commitment that I have with some constituents. I do hope that I might be permitted to seek clarification of one point at this time, if it is agreeable to the Senator. If it is not——

Mr. HANSEN. Mr. President, may I say, speaking on behalf of the distinguished ranking minority member of the Interior and Insular Affairs Committee, that were the Senator here, I am sure he would have no objection. He did, however, assure the Senator from Louisiana (Mr. Johnston) earlier that he would be recognized first. If the Senator from West Virginia would not object—I do not know how long he cares him to yield——

Mr. RANDOLPH. I would like to have the response to the able Senator from Wyoming's question as to time, because I do not want to violate any agreement that was made.

Mr. JOHNSTON. Mr. President, I would suggest, if it meets with the distinguished chairman's schedule, that I be allowed to ask a question or two for a minute or two. Then if the Senator wishes to be recognized, I would like to be recognized at the conclusion of his remarks. I will certainly yield to the distinguished Senator from West Virginia for whatever time he needs, and then ask to be recognized after that, whatever the pleasure of the floor manager is.

The PRESIDING OFFICER. Who seeks recognition?

Mr. JOHNSTON. Mr. President, will the Senator from Washington yield for a question?

Mr. JACKSON. Mr. President, I seek the floor, but I will relinquish it for the purpose of responding to a question.

I yield to the distinguished Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I would like to ask questions relevant to the meaning of the practical effect of the price rollback provision. [Sec. 110.] As I understand it, the initial price allowed is that which was in existence at a particular field on May 15, 1973, plus the sum of $1.35 a barrel. Do I understand that correctly?

Mr. JACKSON. That is correct. The average price on May 15, 1973, as I recall, was $3.90 a barrel. Under Cost of Living Council regulations they are now allowed to charge an additional $1.35, which is the current price of old oil; this averages about $5.25 a barrel.

Mr. JOHNSTON. So, in effect, the intent is to bring the price for old oil to, roughly, $5.25 per barrel?

Mr. JACKSON. The Senator is correct.

Mr. JOHNSTON. In some cases it could be lower or perhaps higher, depending on what the price was on May 15, but the rule is that it will be about $5.25 per barrel.

Mr. JACKSON. The Senator, I think, has stated it accurately.

Mr. JOHNSTON. This $5.25 per barrel price includes the $1 per barrel increase allowed by the CLC or the Energy Office, whichever one allowed it, that was granted just in recent weeks?

Mr. JACKSON. I believe the Cost of Living Council approved it the latter part of December—that is, the dollar-per-barrel increase—and that is included in the $5.25.

Mr. JOHNSTON. That dollar increase was not a cost passthrough but was, in effect, what some might call a windfall profit. Was it not?

Mr. JACKSON. I think that is correct. It was, to my best recollection, allowed as an incentive to production, and did not reflect increased costs. It went directly to the producer.

Mr. JOHNSTON. So, in effect, we are giving old oil owners a dollar per barrel windfall profit while at the same time reducing the price on new oil from $10.35 to $5.25?

Mr. JACKSON. I would not put it that way. I would put it the other way. The producers of new oil took a rather big leap in price this fall, from around $3.90 to a high of about $10.35. That is quite an adjustment. The average on new oil has been about $9.51, but it has hit $10.35 a barrel. That is an increase of $5.45.

Mr. JOHNSTON. Can the Senator call it a windfall when it is new oil that is found under new circumstances? Does not the term "windfall" really apply to old oil, and not to new oil?

Mr. JACKSON. That is true, but such windfalls do accrue when, for every barrel of new oil discovered since 1972—and that would not be new oil to me—they deregulated a barrel of old oil.

Mr. JOHNSTON. Right.

Mr. JACKSON. Which adds on to the consumer's cost another $5 in increased prices. Thus recent price increases for new oil really amount to $10 a barrel for the consumer, above the levels of a few months ago.

Mr. JOHNSTON. If the distinguished manager will recall, when we had the first day of hearings on the question of rollback in the Interior and Insular Affairs Committee, I made an opening statement criticizing the decision allowing deregulation of one barrel of old oil for every barrel of new oil discovered. I made the point that such a pricing procedure was not necessary to increase incentive, and that incentive to discover and produce oil is what we need. I am sure the distinguished chairman recalls that colloquy.

Mr. JACKSON. Yes; I recall that we did provide an incentive for new oil, when we worked out the deregulation of the so-called stripper well, using production of 10 barrels a day or less as a basis for qualification. The debate centered around the fact that the expected price increase would probably be a little over a dollar a barrel. What has happened since then, by reason of the cartel price set by OPEC—the oil producing exporting countries—has driven the price of stripper well production up by not $1 but by $5.45 a barrel—way beyond anything I contemplated—and I must confess I think it was a mistake to make that change which permitted such an extraordinary increase.

The administration has noted this problem. Mr. Sawhill, who is Deputy FEO Administrator, and Mr. Simon, who is Administrator, have commented on it. I should like to quote from the press conference that Mr. Sawhill had on February 1. This is the last paragraph of his statement:

> So we feel that before we would take any action on new oil prices we would ask the Congress and we hope that they would give us the opportunity to put a cap on stripper wells.

Meaning price.

Mr. JOHNSTON. Will the Senator explain to me how it gives an incentive by allowing a dollar increase on old oil?

Mr. JACKSON. We are not defending that. We are authorizing them, of course, to roll it back. We do not require it, but we make it very clear in the provision of the conference report that they can do that. I am not defending that at all. I think it is a clear windfall. Nor do I defend the enormous increase in price as it relates to the new oil and the stripper well.

I do think the stripper well is in a special category, and I think there ought to be a special incentive, and that is one of the reasons we have provided in the bill the basic authority for the President to make upward price adjustments to encourage production if the criteria set forth in the act are complied with and to permit up to a maximum price per barrel of $7.09.

Also on page 13 on the conference report (9)—let me just read it so there is no misunderstanding—it is stated: **[Sec. 110]**

The President may at any time act to establish ceiling prices lower than those provided in paragraphs (2) and (5) if he determines that lower ceiling prices will permit the attainment of the objectives of this act and the purposes described in section 101(b) of the Energy Emergency Act.

As to any future raising of prices, as the Senator knows, the President must submit a detailed analysis to justify that action.

Mr. JOHNSTON. Mr. President, I thank the distinguished Senator.

Mr. ALLEN. Senators know that the price of propane has gone through the roof. There are thousands of families in my State who depend on propane for cooking, for hot water, for heating and for drying their crops. In only a few months the price of propane has more than tripled, and many of my people just do not have the money to pay these fantastic prices.

As the price of propane has gone up, very poor families have bought less of the fuel. Where once they bought propane sufficient to fill their tanks on a monthly basis, now they are buying only a half or a quarter tank.

In the cold months, Georgia families have seen their monthly propane bill rise from the former level of about $25 to a new high of $60. In other States, the monthly bill is now as high as $80. What does that do to the elderly couple trying to live on social security? It forces them to give up a certain amount of heat so they can buy food and other essentials. This is a tragic situation which must be corrected.

Did the conferees, in their report, provide any relief from exorbitant propane prices?

Mr. JACKSON. Propane gas, the fuel which heats the homes of millions of rural families in the South and Midwest, has increased in price by 300 percent in the last 9 months, allowing the oil industry to enjoy huge profits at the expense of the very people who are least able to fight back.

There has either been an honest mistake by the Government in allowing the propane gas price increase or Government officials are guilty of deliberate and cynical opportunism. In either case, the result is the same—the rural families of the South and Midwest are paying the bill while the oil companies make unjustified profits.

What has happened is obvious. The oil companies are being pressured to hold down prices in more visible products such as fuel oil, gasoline and diesel. But in the less visible products such as propane—

a product which is used extensively by the least visible Americans—the prices are going up at breakneck speed.

In Oklahoma, the cost to the homeowner for a gallon of propane last year was 12 cents a gallon. Now it is 37 to 40 cents a gallon. In Georgia, the price per gallon of propane at the distributor level has gone up over the year from 5 cents a gallon to 21 cents.

These price rises are being repeated throughout the South. People are quite literally going without heat in their homes.

Because the users of propane gas for home heating fuel are largely rural and poor, these consumers are being victimized. Profits which the industry cannot make in the sale of more closely watched petroleum products are being earned with a vengeance in propane.

The distributors tell us that there is no shortage of propane. The National LP Gas Association contradicts FEO's assertion that there is an acute propane shortage, and says it can supply all its traditional customers. Petrolane, the largest domestic marketer, says its stocks are 12 percent higher than a year ago, but the cost of the products it gets from refiners has increased 400 percent from a year ago.

The problem with propane prices is that the dollar-for-dollar pass-through in the Petroleum Allocation Act has not been applied proportionally to all petroleum products. The average prices of refined products have increased 30 to 50 percent, but some items like propane have been allowed to increase many times more.

On January 30, FEO proposed controls and propane prices for the first time, but these are just directed to controlling future increases, and prices are already much too high.

The Energy Emergency Act corrects this situation by mandating that rollbacks of petroleum products take into consideration the historical relationship among product prices. The language of the act intends, and the conferees intended, that the rollbacks required by the act by focusing especially upon those products like propane whose prices have been allowed to increase disproportionately.

Mr. Allen. Not all propane is refined from crude oil. Does this act reach the propane that is stripped from natural gas?

Mr. Jackson. Although the Energy Emergency Act does not deal with the allocation or pricing of natural gas itself, natural gas liquids and condensate are treated like crude oil both by the Petroleum Allocation Act and by this act. The prices of both natural gas liquids and condensate, as well as crude oil, will be rolled back by this legislation, and these rollbacks must be passed on to consumers of those products which are made either from crude oil or from natural gas liquids and condensate.

It should be noted that "natural gas liquids" and "condensate" are physically the same thing. Natural gas liquids are stripped from the natural gas from oil wells and condensate comes from gas wells. Both are included in the category "crude petroleum" unless they are specifically excluded.

Mr. President, there has been much discussion here today about the likely impact of a price rollback on petroleum supplies, very little of which has been supported by statistics or other factual data. For the record, I would like to run through a number of statistical and economic studies which deal with this subject. Our prime concerns in considering a rollback are two: first, the need to set a price which will

permit development of a future supply of petroleum adequate to meet long-term needs; and second, the need to achieve equity for energy consumers and to avoid intensifying inflationary pressures on the economy by allowing runaway prices. With regard to the first point, there have been many allegations here today that any price rollback will drastically reduce supply, both immediately and in the long run. Yet I would like to point out that a survey of petroleum economic studies done in the last year indicate that, to achieve 80 percent energy self-sufficiency by 1980, the average price of crude oil would have to be between $4.45 and $7 a barrel—the most recent of these studies was completed in December 1973, by the National Petroleum Council—yet section 110 of the conference report, would permit a ceiling price for crude oil, where justified, of $7.09 a barrel—considerably above the levels quoted by the industry as necessary to provide sufficient incentives for that exploration and development needed to assure continued adequate supplies of domestic energy. Since these are the industry's own figures, we assume they are an accurate reflection of their needs.

As to the second point, we cannot neglect the question of equity. Petroleum and petroleum products comprise a fundamental and inescapable part of the economic life of every industry and every consumer. A study made available to the Committee on Interior and Insular Affairs by John Dunlop, of the Cost of Living Council, shows that petroleum related costs represent from 14.5 percent to 43.3 percent of the total cost of 25 of our country's most basic industries.

As these costs are passed on to the ultimate consumers, the inflationary impact of soaring oil prices multiplies several times over. The price of oil products in the past few months has increased dramatically: utilities are paying for residual oil 150 percent of the price they paid 3 months ago; gasoline and heating oil prices have risen 50 percent and more in certain areas. Low- and fixed-income persons, small businesses caught under Cost of Living Council freezes, independent workers have all been caught in a crushing price squeeze. Clearly, this is not an equitable situation, particularly in the light of the profits being reaped by the oil industry, profits which have their origins in geopolitics and not in corporate business acumen.

I firmly believe we can satisfy both our longer term supply needs and our immediate need for equitable pricing, by adopting the provision in **section 110** of the conference report. I urge the Senate to consider these facts carefully and to support passage of the conference report at the earliest possible date.

Mr. Randolph. Mr. President, the energy crisis which has had a profound effect on life in this country, certainly since last fall, continues to force daily adjustments in our traditional ways of thinking and acting.

The shortage of fuel, as we discuss this matter this afternoon, is just as severe, perhaps more so, as it was a week ago when the Senate voted to recommit the Energy Emergency Act to conference with Members of the House of Representatives. I felt at that time that the conference report was responsive to our needs, although we were not in complete agreement. I therefore opposed the recommittal.

After we went back into the conference, we worked for 3 consecutive days, for long hours and gave the matter careful consideration.

I think that we have strengthened the provisions, and in some instances readjustments were made which will be helpful. The basic values of the measure, as we had it at an earlier date, remain and will enable us to act forthrightly to conserve available energy supplies and use them in a manner that is equitable and in the best interests of the people of the country.

I must remind the Senators in the Chamber, and those who may read these remarks, that this measure was not hastily assembled during the first session of the 93d Congress.

Mr. RANDOLPH. Mr. President, the provisions in the bill were carefully considered. We have now given them, as I have indicated, further scrutiny and I hope that the matter will be acted upon either today or tomorrow in this body.

I do not believe that the delay is justified. This is urgently needed legislation.

I believe that we can agree that the executive branch has reacted to the energy crisis with limited legal authority. And I think that to solidify these efforts, we in the legislative body must cooperate.

I realize that the administration may not want to cooperate in the way that we are presenting this conference report to the Senate. However, this crisis has been a traumatic experience for millions of Americans. Except during wartime, the American people have not faced shortages of the type which now disrupt the mobile economy and the personal lives of people throughout the Nation. Until now, I think we can agree that much of our success in reducing the demand for energy has resulted from the self-discipline and voluntary cutbacks by companies and individuals.

The PRESIDING OFFICER. There will be order in the Senate. The Senator is entitled to be heard.

The Senator is entitled to be heard.

Mr. RANDOLPH. Mr. President, I realize that I am in the minority perhaps in the Senate and in the Congress in the advocacy of gasoline rationing. However, I know that State after State has begun to realize the importance of taking this step. We failed in the 1st session of the 93d Congress to impose gasoline rationing on the Nation. We should have done so. We lost in our effort by just a few votes.

The legislation pending before the Senate grants to the executive branch the authority to ration gasoline. This is an authority that should be used immediately. **[Sec. 104.]**

I am convinced that motorists will more willingly accept a rationing system under which they know what they will receive, rather than the inequities, and there are plenty of them, and continued uncertainty of current conditions.

The administration has shown reluctance to ration gasoline. However, I feel strongly that delays and timidity in taking the necessary steps will neither alleviate the crisis nor sustain public confidence in our ability to do this job.

Mr. President, I have for more than 15 years been deeply involved in matters relating to fuels and energy in the Senate. I have been disturbed and saddened by the failure of our country to have an overall policy dealing with fuels and energy.

I authored a measure which created the National Fuels and Energy Study which is now being conducted within the Senate Committee on

Interior and Insular Affairs. I have worked as an ex officio member of that committee in that study.

So, the thoughts I express today have not been brought together hastily. My interest is not cursory. It has been founded in a study of the matter. Within the past 15 years the Public Works Committee has had an involvement. It has been primarily concerned with energy's relationship to environmental protection programs. The production of energy is closely tied to the Clean Air Act, which in 1970 formalized our commitment to ending, insofar as possible, of pollution in the air.

The legislation before the Senate contains provisions that modify some of the requirements of the Clean Air Act on a temporary basis. **[Title II.]**

Pollution reduction requirements relating to both stationary sources and automobiles have been revised in a realistic way to cope with the energy shortage.

I commend the members of the Public Works Committee for the action that has been taken. None of these actions will weaken the basic strengths of the Clean Air Act or the purposes of that legislation. However, I do feel that we have written into the conference report provisions that will ease the energy shortage. And we have not compromised the cause of a cleaner environment.

Mr. President, the shortage of oil and the development of new techniques now make it possible for generating plants to return to coal as a basic fuel.

The Energy Emergency Act allows at least 46 electric powerplants now fueled by oil to convert to coal. **[Sec. 106.]** I think it is important that the Senate recognize that since much of the available coal used for this purpose has a high-sulfur content, there could be a resurgence of air pollution without the installation of control devices for cleaning sulfur oxides from stack gases.

A major step in this direction took place recently when the Environmental Protection Agency determined that the technology to remove sulfur from stack gases is proven and reliable. The manufacturers of this equipment—known as scrubbers—are confident, and I have spoken with them, that it could be installed in all 46 powerplants eligible for conversion to coal within 4 years.

I repeat—and sometimes I am certain there are those who do not wish to have it repeated—that coal is our most abundant domestic fuel resource. The United States, in fact, possesses more than half of the world's known coal reserves.

I am from the State which has the largest underground coal production, and I am acutely aware of its potential for making this country energy self-sufficient.

Questions have been raised about the ability of West Virginia coal to replace oil. I know that people have asked me recently: "What about the ability of West Virginia to mine the coal to replace oil on a large-scale or sustained basis?"

We in West Virginia know that much of our coal has a medium- to high-sulfur content, and its use would not be compatible with environmental requirements despite the oil shortage. The establishment of the reliability and availability of scrubbers at a reasonable cost should hasten their installation and create long-term markets for West Virginia coal.

Mr. President, I hope that my colleagues will listen carefully to these words:

Substantial quantities of oil could be saved by converting powerplants to coal. This potential is estimated to be more than 500,000 barrels a day—not a month, nor a week, but, I emphasize, a day—or nearly one-third of the currently estimated oil supply shortfall.

I realize that many Members are not in the Chamber to hear these words, but it will be possible for them to read what I have said. We are also told that half of the 46 generating plants eligible could be converted to coal during the first quarter of this year, providing an almost immediate saving of 200,000 barrels of oil each day.

Twenty-three of these plants can be changed without any negative environmental effects. So I do want Senators to know that we are not rushing to burn coal in greater quantities unmindful of its impact on the environment. Even with the sophisticated equipment available to remove sulfur from stack gases, conversion to coal would not be permitted in areas where public health would suffer.

Finally, Mr. President, approval of the conference report does not mean that the Congress has discharged its duties with respect to energy. This measure is merely the first step in what must be an extended and searching examination of energy supplies and utilization. We need not panic over the current situation which, in the long run, may have beneficial results by stimulating us to plan realistically for the future.

The energy potential in our country is enormous, but we have to mobilize the enthusiasm, the imagination, the creativity, and the followthrough of our people to move forward. I think we have the qualities I have just mentioned. I know that the resources are abundant, if we tap them, as we can. But I trust we have learned a lesson that will guide us in these efforts—that our goal must not be a return to the old ways of extravagant uses of energy.

So this conference report brings to us a challenge and a needed step in the direction of establishing rational policies for the development and the use of energy. It is a positive measure for meeting our current needs. And, as I have said earlier today on this floor, I am not a caustic or carping critic, but I do trust that the Members of this body will realize that we must face up to the urgency for action, and our responsibility as citizens of the Republic. I cannot speak for what action the House of Representatives will take, or what its legislative or parliamentary problems may be. But I urge that we act today on this important matter. In my considered opinion, we will fail the country and the people if we allow this matter to be delayed and to go over until we return, perhaps on the 19th or the 20th of February after the recess.

Mr. President, as Senators know, the conference report on the Emergency Energy Act contains for the most part the same provisions that were in the conference agreement of last year. One such provision relates to the priorities for our Nation's schools in the allocation of fuels. During the debate on the conference report last December, I briefly outlined the intention of the conferees when language was inserted in the conference report on educational needs, and I questioned the able Senator from Washington (Mr. Jackson) on this point. I

ask unanimous consent that my remarks and the response of Senator Jackson at that time be inserted in the Record.

There being no objection, the remarks were ordered to be printed in the Record, as follows:

Mr. RANDOLPH. Mr. President, I understand that the December 13 mandatory fuel allocation regulations proposed by the Federal Energy Office give our Nation's schools the place of high importance which they deserve and I am very pleased about that.

The Senator from Washington knows that a general purpose of this act and the mandatory Petroleum Allocation Act is to protect the public welfare and maintain all essential public services. In this connection I ask the Senator about the intent of this measure with regard to education. It is my impression that this bill is not intended to result in a forced closing of schools, and that the educational process and schools will continue with a minimum of disruption.

It is my understanding also that the conference report language on education, coupled with the Senate record on passage of the Emergency Petroleum Association Act, insures that education will be treated as a vital public service whenever priorities are established under section 4 of the Emergency Petroleum Allocation Act.

Does the able Senator from Washington concur in this analysis?

Mr. JACKSON. Mr. President, the Senator from West Virginia is correct in his analysis of the intention of this measure. The conferees report intends that education be considered a vital public service.

Mr. JOHNSTON. Mr. President, the decision that this body will make by its vote on this conference report will be among the most important this Nation will ever face. We are going to determine, in my judgment, whether the United States will move in the direction of energy sufficiency, or guarantee that we will be dependent on foreign sources and be short of oil and energy in the years to come.

In that light, I am disturbed and very much afraid that a dangerous kind of atmosphere pervades this country and the Congress. It is the mentality of a lynch mob. There appears to be an abiding conviction on the part of Members of Congress and the public that people and companies that search for and produce oil should be punished, that they are guilty of some personal kind of transgression that qualifies them for whipping at the public stock.

Frankly, I think it would be better if we could inflict that kind of corporal punishment because regardless of whether such punishment might be just or unjust, it would be cheaper for the country than to have this kind of atmosphere which, in turn, will result in very bad legislation. In recent weeks, we saw the specter of what this kind of lynch mob atmosphere can do to Congress. We saw the conference committee on this bill authorize and approve a bill on so-called "windfall profits" which no one—and I mean no one—was willing to speak in favor of and which even the proponents said was probably unconstitutional, unwise, and unworkable.

But for a filibuster on the floor of the Senate, that legislation would have been the law of the land. Cooler heads, luckily, prevailed, through the intercession of those not usually connected with the oil industry. But, now, Mr. President, we are faced with still another provision—not quite so bad as the so-called windfall profits provision, but a very, very bad provision that is difficult to defend. The provision in the conference committee's report relating to rollbacks is probably counterproductive and will guarantee, in my judgment, that we will not find new sources of oil. If we need to punish the oil companies and take from them the so called windfall profits—and there may well be

reason to re-examine the tax treatment given to oil companies in light of recent price increases—then there is a better way to do so than by the rollback provisions of the conference report.

In my colloquy with the distinguished chairman of the Committee on Interior and Insular Affairs just a few moments ago, we established that the provisions of this bill relating to old oil allow the oil companies to keep a $1 per barrel windfall price increase recently granted by the administration. The provision relating to old oil, which amounts to over 70 percent of our domestic oil, does not give anyone the incentive to explore for oil. In my judgment, and as the chairman of the Committee on Interior and Insular Affairs has pointed out, this treatment of old oil is, in effect, a windfall profit in terms of incentives to produce more oil.

On the other hand, the price of new oil, which involves less than 30 percent of the oil produced domestically, does affect the incentives that people would have to drill for oil. It is the price of that oil, which is now on the average about $9.50 per barrel and which, in some instances, has gone over $10 per barrel, that will be rolled back to $5.25, the same as the cost of the old oil.

It is a very expensive and chancy thing to explore for new oil. The easy sources of new oil all have been found. All of the shallow production, all of the obvious structures, have all been explored. The oil to be found now either is in tight formations or in smaller formations that are difficult to find. Once found, production is not great, or is from depths much deeper than anything we find in a foreign country such as Saudi Arabia.

Therefore, the need to give incentives for finding new oil is dramatic. It is obvious. In fact, Mr. President, no one, in my judgment, can argue with the need to provide the incentives to find new oil.

At the insistence of some of us, hearings were called in the Committee on Interior and Insular Affairs on Thursday, Friday, and Saturday of this past week, with reference to a rollback in the price of oil. Experts testified at that time—not oil company experts, but experts in the field of economics, from universities such as Harvard. A number of questions were asked of those experts that bear directly on the question of the desirability of rolling back the price of oil. In this connection, it should be emphasized that the conference report would only have the effect of rolling back the price of new oil. Old oil, as I previously have noted, would be allowed to continue to sell at its present price of $5.25 per barrel.

The first question put to the experts was: How much would we save on the price of a gallon of gasoline by rolling back the price of new oil 25 percent?

The panel of experts who testified on Saturday agreed unanimously that a price rollback on new oil would result in a savings of less than 1 cent per barrel. If we double the cut from 25 percent to 50 percent—the maximum amount that could be cut under the conference report—the savings might be as much as 2 cents per barrel.

Now, for the price of 1 or 2 cents per barrel, Mr. President, this country, this Senate, is asked to put itself on a course of reducing incentives to explore for hard-to-find, expensive oil.

During our hearings on price rollbacks, even Lee White, a former Chairman of the FPC and an advocate I believe of nationalization of

at least part of the oil industry, agreed that the price of new oil is not the place to "punish" oil producers. In my judgment, and I believe in that of Mr. White, we would do better to do away with certain unjustified tax benefits such as the foreign depletion allowance. No one really defends that. Why do we not get at that? Or why not do away with excessive foreign tax credits? No one would defend those, and much more money is involved there.

Why not roll back the price of old oil—which represents approximately 70 percent of domestic crude—to its December price of $4.25 and eliminate the $1 per barrel windfall that was allowed despite the fact that it is not really a viable incentive to produce more oil? Why not disallow the present bonus barrel—so-called released oil?

There are many ways to save much more money than by rolling back the price of new oil. All the experts who have testified come to that conclusion.

The trouble is that we are trying to conduct the business of this Nation and of the Senate in an atmosphere that does not permit reasonable analysis of the issues and adequate time for hearings. Indeed, I believe we are in the process of making one of the most important decisions that we may ever make in this country—the direction in which we are going on energy—yet we are making that decision in an atmosphere of irrationality and haste that I believe bodes ominously for this country.

Mr. President, this is no way to legislate; it is no way to determine the course of this country. Frankly, the atmosphere in this country is such that even in my own State of Louisiana, which is an oil-producing State, people are saying, "Let's get the oil companies." Perhaps we ought to get them. Perhaps they are guilty of some transgressions. But, let us not pull the whole Nation down in a desire to punish the oil companies.

In a rush to judgment unsupported by facts, unsupported by hearings, and completely contrary to what the experts say, the Senate is asked to be stampeded into a decision that virtually no one can support on any other basis other than to say that we have to have a decision and we have to have a vote now because the people want to punish the oil companies.

I hope the Senate will not do that. I hope instead that cooler heads will prevail; that we can save money for the consumer by different methods; that we can, when we finish our hearings and our legislation here, have legislation that does not take away the incentive necessary to produce new oil. Let us hope that these critical decisions will be made properly by the Senate, so that we do not sacrifice the future energy self-sufficiency of this Nation to short-term political expediency.

Mr. Buckley. Mr. President, I compliment the Senate from Louisiana for a thoughtful analysis of the present situation and for pointing out to this Chamber the extraordinary consequences to the future of this country if we step in the wrong direction.

Mr. President, last November, when the Senate version of the National Emergency Act of 1973 was being debated, I criticized the legislation for an indiscriminate delegation of authority to the Executive far beyond that required to enable the President to meet legitimate emergency needs, and for its failure to contain any measures designed

to bring the emergency to an early end by stimulating an expansion of our domestic energy base.

After emphasizing the adverse impact on supply of the Federal Power Commission's regulation of the wellhead price of natural gas, I stated:

> In the absence of such fundamental changes in federal policy towards energy pricing, we are destined to see the current energy emergency develop into a chronic one on the basis of which Congress will be asked to institutionalize the extraordinary and dangerous delegation of power that S. 2589 bestows upon the Presidency.

Mr. President, S. 2589, in its original form, was bad enough. But what has emerged from the conference committee not only preserves the bad features of the original legislation, it has grafted in pricing provisions that are tantamount to a fraud on the consumer. While promising "price rollbacks" and an elimination of "price gouging" that on analysis will save the consumer no more than 2 or 3 cents per gallon of gasoline, it will cut back by a large margin the economic incentives that alone will enable us to work our way out of our domestic energy shortages and liberate ourselves from the world oil price structure mandated by a handful of oil exporting countries.

I respectfully submit that the "antigouging" provisions represent legislation of the worst kind. It represents in my judgment, an emotional rather than a rational reaction to developments that have such large significance for the future of the country that only the most thoughtful response is justified. While the Interior Committee held hasty hearings on the proposition of price rollback, it was clear from the outset that they could provide no serious guidance in the formulation of policy. The first hearings were scheduled for Thursday afternoon, January 31, to be followed with hearings on Friday and Saturday, February 1 and 2, all in theoretical preparation for the deliberations of the joint conference committee beginning at 10 o'clock the following Monday morning. In other words, it was clear from the outset that there would be no opportunity for those hearing the testimony to evaluate it and to make recommendations for the benefit of the conferees.

In point of fact, the distinguished chairman of the committee, Senator Jackson, made it clear at the outset that the only purpose to be served by the hearings was to confirm conclusions already set in concrete. I quote from his opening statement:

> I can find no conceivable justification for current fuel price levels. By all evidence we have seen, Americans are paying unconscionable and unnecessarily high prices for essential petroleum products. A rollback of petroleum prices to more reasonable and realistic levels is absolutely essential. That is the subject of these hearings today.

In support of his contention that any price on domestic crude oil in excess of $7 per barrel was unreasonable and unnecessary in stimulating the vast expansion of exploration we must see in the next few years, the chairman cited, from time to time, statements made at an earlier hearing by the presidents of the seven largest international oil companies.

Yet the testimony given at the hearings by representatives of the domestic oil industry and of the 10,000 independent wildcatters and producers that historically have accounted for between 75 and 80

percent of domestic discoveries, was dismissed out of hand. Their testimony, which I believe to be supported both by experience and commonsense, underscored the proposition that the current average price being paid for new oil—about $9.50 per barrel—provided significant incentives for finding new oil and gas and extending the life of existing fields that in the aggregate would add significantly to our total domestic production.

I think it well to keep in mind that the large international companies do not represent the alpha and omega of wisdom on matters of petroleum. Because their operations are integrated, they can make up losses in one area from profits in another. A cynic, of course, might argue that the majors would support any price level that would restrict the activities of independents. They might also point out that the big international oil companies are net purchasers of domestic crude, and hence have a strong parochial interest in keeping prices down.

I, myself, am more persuaded by the argument that the heads of these vast companies were in part speaking out of timidity and in part reflecting the sheltered experience of the giant companies. Historically, they have not been willing to take the same geological risks as have the independents; and when independents at great risk have managed to prove up new geological prospects, the majors have always been able to buy their way into a participation. I would suggest, in other words, that the opinions of these seven gentlemen ought not to be considered a sufficient basis for measures that will have a profound effect on the rate at which we develop our domestic energy resources.

It could be stated, Mr. President, that the testimony offered by the representatives of the American Petroleum Institute and the Independent Petroleum Association of America was self-serving; and it is undoubtedly true that they view the welfare of the Nation through a perspective that reflects their own. It happens, however, that their testimony found ample support in that given by a panel of economists who testified on Saturday. Dr. Thomas Stauffer, research associate at the Center for Middle Eastern Studies at Harvard University, stated, for example, that while he considers econometric calculations to be unreliable, "engineering-type calculations lead to the suggestion that there should be about a 50-percent increase in potential production for every doubling of the price." He pointed out that—

> Everything else remaining equal, an average price increase of 50 percent would permit the depths of the average well to increase from about 5,600 feet to perhaps 6,800.

He went on to say that—

> In a special sense [this extra depth] means that 20 percent more sands may be tapped. More generally, however, three additional effects contribute to a still greater increase in production as a consequence of a price increase. First, it becomes economically justified to explore for smaller or less certain deposits in older, less shallow zones. Second, secondary or tertiary recovery projects may be implemented more thoroughly, increasing output both from new finds and also from older reservoirs. Finally, one can operate in deeper water offshore, increasing the scope for new discoveries, or one can develop lower-quality, higher-cost fuels when found.

Now, one can always argue with conclusions drawn by economists and quarrel with the policy objectives they define. What was striking

about the testimony of the witnesses last Saturday, however, was the strength of their belief that to proceed to legislate a rollback without adequate study of the consequences was nothing short of reckless. This was made explicit when I asked each of the economists at the morning panel to comment on the following statement contained in a telegram addressed to the Senator from Arizona (Mr. Fannin) by Dr. E. Jackson Grayson, Jr., of the School of Business Administration of the Southern Methodist University:

In my opinion the energy pricing issue is far too complex to be handled in pending legislation without considerable additional investigation. The consequences of moving too quickly and without sufficient background information on such a measure could place this nation in greater international jeopardy by inhibiting rapid movement towards domestic energy self-sufficiency.

Each member of the panel of expert economic witnesses; namely, Dr. John H. Lichtblau, executive director, Petroleum Industry Research Foundation, New York City; Dr. Stauffer and Mr. Warren Davis, chief economist, Gulf Oil Corp., Washington, D.C., agreed vigorously with Dr. Grayson's position. When I asked whether the time elapsing between the close of hearings on Saturday afternoon and the opening of the energy conference at 10 a.m. the following Monday morning would allow for the accumulation of "sufficient background information," they each answered with an emphatic "no." When I asked them if they would consider it irresponsible to attempt to enact a pricing formula the following week, they answered with an equally emphatic "yes."

I then pointed out to the witnesses that the amendment to the Emergency Petroleum Allocation Act then under consideration would require the President—

To specify ceiling prices for sales of crude oil, refined petroleum products, residual fuel oil, which avoid price increases resulting from the current energy emergency in excess of those that would have the function and effect of increasing long-run supply, diminishing long-run demand, and allocating said products to their most valuable uses.

As it was the consensus of their earlier testimony that even with the best of information it would be impossible to set such prices with any degree of precision, I asked whether in their judgment American consumers would be better served by having the ceiling price set $2 too low or $2 too high to achieve the statutory objective. Again, there was a consensus. It was that the long-term interests of the American consumer would be better served by an error on the high side. It was pointed out that even if the price of new and stripper well oil were to be rolled back to $5.25 a barrel, the net impact on the consumer would be a saving of between 2 and 3 cents per gallon of gasoline. It has since been computed that even if all presently unregulated domestic oil were to be rolled back to zero, the savings would be in the order of five cents per gallon. They did concede that while even this much relief would be of some immediate benefit to the American consumer, it would constitute an eating of one's seed corn at the expense of future corps.

Mr. Tower. It occurs to me that if we have a rollback in the price of domestic crude, it is going to reduce the supply of domestic crude. It is automatic. There is a certainty about it. I grew up and I live in an oil-producing area. I can assure Members of the Senate this would

be the case. That would mean that even if we could increase imports from Venezuela, we would be paying OPEC prices. So it would be replaced by crude costing two to three times as much. Therefore, I do not see how there could be any savings.

Mr. Buckley. The Senator is correct. Even if the prices were to rise for new oil, in light of the international prices today, at least the money would be paid to Americans and it would be available for reinvestment in America to expand the base of supply for all Americans.

Mr. Tower. The Senator is correct. I am saying we proceed on a set of false presumptions if we say that a rollback in the price of crude will result in gasoline costing less. I do not see where the savings will come. This is the kind of misinformation that has been dumped on the American people.

Mr. Buckley. I fear the Senator is correct. This is something made totally clear by the witnesses before those hastily engineered hearings. Unfortunately, the Senate has not had the opportunity to digest that testimony in the normal committee fashion.

Mr. President, to continue with my statement, it may well be that some sort of limitation ought to be placed on the price of new oil produced within the United States, other than the ceiling that is in effect imposed by the world price of crude oil. It could well be that the sharp increases in domestic prices over the past 3 months will not level off, as many believe they are in fact doing. If so, the whole question ought to be considered independently of the Emergency Energy Act.

The fact is that the whole problem is so complex and the consequences of a wrong decision so deeply damaging to the American people and economy, we simply cannot move with the haste we have exhibited in this legislation. Because we are dealing with the price of incremental oil, a few weeks' delay simply will not spell disaster.

Furthermore, we should keep in mind that we are not operating totally in the dark on this question. At the end of World War II, we had serious shortages in domestic oil production and many at that time were predicting that the United States would never again achieve conditions of self-sufficiency. Nevertheless when the price of oil was decontrolled, the price per composite barrel of oil and gas—stated in 1973 dollars—rose sharply from about $2.40 a barrel to $3.60 a barrel. At the same time, expenditures for exploration and development of new oil and gas reserves rose from less than $3.4 billion to almost $8.2 billion, with a resulting expansion of oil and gas production that not only made possible our vast development of natural gas, but which resulted in steady decreases in the price of oil and gas from a peak of $3.60 in 1948 for a composite barrel to a low of $2.20 in 1972.

This seems to me a clear-cut demonstration of the essential role played by price in stimulating investment and overcoming shortages. It is true that immediately upon a sudden rise in prices, significant profits are made. But experience also demonstrates that the resulting rapid expansion of capital investment brings ensuing profits back in line with average industry experience. I see no reason why we should not assume a repetition of this experience in the years immediately ahead if we allow economic nature to take its course; and in fact, the financial commitments now being made by every segment of the domestic industry indicates that this will in fact take place.

Mr. President, it is absolutely essential that we understand that we cannot begin to hope to achieve our objectives of substantial energy self-sufficiency in the 1980's unless incredibly large sums are raised and invested, much of them at very great risk. According to estimates made by the Chase Manhattan Bank, if we are to meet our objectives of substantial self-sufficiency, the oil and gas industry will have to invest an average of more than $60 billion per year in the United States between now and 1985. This will not be done if we remove adequate incentives to test the deeper, more difficult, more risky targets.

It would seem, Mr. President, that the only advice followed by the conferees was that given at the first day of hearings by Mr. Lee White, the former Chairman of the Federal Power Commission. It was he who urged the Congress to set a specific figure rather than delegating the authority to the Executive which, in turn, would presumably try to accumulate the basic data required for a prudent judgment. The conferees have set their price at $5.25, with some degree of flexibility under special circumstances for a rise to $7.09. It is ironic to me that the day seems to have been carried by a man who as much as anyone, perhaps more than most, is responsible for today's significant shortfalls in that form of energy that supplies almost a third of our needs; namely, natural gas.

Mr. President, I urge that this legislation be defeated so that we may go back to the drawing board and draft legislation that will meet the needs of the present energy emergency without granting excessive authority to the Executive; legislation that will not condemn us to a condition of perpetual dependence on overseas sources of petroleum, by interrupting and interfering with the natural incentive of the marketplace.

Mr. MANSFIELD. Mr. President, in view of the fact that a unanimous consent was not attainable, I think the Senate should be on notice that there is always the possibility that there may be votes either today or tomorrow, and Senators should prepare themselves accordingly.

Mr. BELLMON. Mr. President, the issue before the Senate today is not simply the passage of S. 2589, or the rollback of crude oil prices. The issues, in my opinion, are three: Number one, does this Nation seriously intend to become self-sufficient in energy production from our own abundant resources? Number two, is it the considered position of the Senate that private energy industry should be denied the opportunity to solve the Nations energy problems? And number three, does the Senate desire again for this country to become dependent on insecure foreign sources of energy?

We may as well face the facts. There is simply no way this country can again have all the oil and gas it needs or wants from traditional sources of petroleum. There simply is not enough available from the known or yet to be discovered zones in this country, or even Alaska, to provide all the energy this country needs from petroleum sources. There is no way for this Nation to be again fully supplied with energy unless we shift to newer or more costly sources of energy.

What I am saying is that in the future the United States of America must get its energy from coal, oil shale, nuclear power, and probably other, more costly, and what we now consider more exotic, sources.

The best information, we have is that oil from coal will cost, under present day conditions, something like $8.50 a barrel. Oil from shale will be just as costly.

Therefore, what we are saying, if we roll back crude oil prices, as provided in S. 2589, [Sec. 110] is that we are foreclosing, at least for the foreseeable future, the possibility of attracting investors to the notion of building the coal liquefaction or oil shale plants that finally have to become the source of much of the fossil fuels needed by the consumers of this country today. This is what is really at stake today. We are simply saying to the investors that we do not want them to make the multi-million-dollar investments, over the next 5 to 10 years, in the kinds of plants that offer the only real hope for solving the Nation's energy problems.

It was my feeling, after the Arab oil embargo was put into effect, that the citizens of this country had reached the conclusion that they would never again want to get this Nation in the position of literally being held hostage, as far as national policy is concerned, by govenments whose countries produce oil. By our consideration of S. 2589. Congress will be making it absolutely certain that, if this legislation becomes law, in the not distant future we will again be importing far more energy from the Middle East than we should, thereby greatly jeopardizing this Nation's ability to survive in case of another oil embargo.

To me it is tragic that in a country like this, where we have perhaps one and a half trillion tons of coal, enough to last 500 to 1,000 years, we have had a policy for a long time of not doing enough to start to make it possible to bring coal into production in a form that will not be destructive to the environment through coal liquefaction and gasification plants. We now have an opportunity of creating a set of circumstances whereby this kind of plant can be built and where that form of energy can be put into production.

I believe this is the occasion when the Senate and the country need to think seriously about whether we are willing to pay the prices necessary to get the energy we need from the sources which are available in such abundance, as I have indicated in the case of coal.

The same can be said about oil shale. The only reason we do not have abundant energy from these sources today is that it has not become economical to produce from these types of fossil fuel.

I have been in consultation recently with some experts in coal gasification and coal liquefaction. There is no question that the technology exists. The factor missing is the economic incentive to get on with the job.

I recognize, and I think most people in the oil business recognize, that the price of any crude oil, particularly for new oil, and from stripper wells, jumped far higher than was indicated for the industry. Even though the price has jumped, it is still not as high as the prices we pay for oil from imported sources. But the price has risen and has started to bring into realization the investment that is required to produce oil from coal.

If we pass S. 2589, we are going to give an opposite signal. We are going to say to potential investors that the time is not yet ripe for them to make the multi-million-dollar investments, and that they can put their plans on ice until the next crisis starts.

The problem is that it will take several years to get these plants in operation. If we defeat S. 2589 and make it plain that we are interested in solving the problem, I believe we can make it possible for liquefaction plants to be under construction within 3 to 5 years, and thus obtain a sufficient amount of crude oil from those sources.

My position on S. 2589 is not based simply on the fact that the prices of crude oil are unfair. Perhaps the traditional oil industry could live with them, and perhaps even prosper at the upper levels of prices anticipated by this bill. The problem is that new sources of energy simply cannot be brought into production under the terms of this legislation.

My opposition stems from my belief that the current energy crisis has been caused in the past by some unwise and short-sighted governmental policies and practices, and that if we continue those practices, we are going to have a crisis for the indefinite future. The crisis will only delay construction, prolong the current shortages of energy, and delay the day when the Nation will again be substantially self-sufficient in energy and free from international energy blackmail.

In order for the United States to become self-sufficient in energy, it will be necessary for huge sums of money to be invested, searching for and developing new oil and gas reserves, opening of new mines, constructing coal liquefaction and gasification plants, and developing new types of energy sources. The imposition of a crude oil price rollback would only further impede the discovery of new sources of fuel.

The question the country and the Congress must face and solve is: Where will this huge sum of money come from, and will the private sector or the Government be in charge of developing the new energy sources and operating the plants once they are in place?

The adoption of S. 2589 is the first long step down the trail toward the nationalization of the Nation's oil industry.

I make this statement because the impact of S. 2589 is to make it difficult, if not impossible, for the private energy industry to accumulate the funds and to attract the investments that will be necessary for developing the abundant natural resources which the Nation fortunately possesses.

Without these funds, the private sector's ability to develop a solution to the Nation's energy shortage will be seriously and permanently damaged. Lacking new supplies of energy, the consumer will naturally blame the energy industry, and sooner or later will begin to insist that the Government move in to the vacuum.

When this happens, the American taxpayer will begin to pay the bill and Federal bureaucrats will begin to make the decisions as to where to drill oil and gas wells, where and when to open coal mines, and where to build the energy processing plants.

If experience in other countries means anything at all, the American taxpayer can expect the bureaucracy to fumble the ball as is done in so many other areas. Also the energy consumer can expect to pay a far higher price for his energy than he is now paying or will pay if private investors and private operators continue to be in charge of the energy industry.

Attractive as it may sound to soak the energy companies because of an increased profit due to the Arab embargo of oil, the fact is that this section is totally counterproductive. Someone, either the energy

consumer or the taxpayer, must provide the funds needed for a vast expansion of the Nation's energy industry. S. 2589 will not keep this investment from being made. Rather the impact of this bill is to deny to the private sector the funds necessary to expand the Nation's energy output and put the Government in position of beginning to take over this large and vital section of the Nation's economy.

If this happens, the American people will pay much more for fuel. We will at the same time increase consumption. This will, of course, make the problem even more serious.

It is unfortunate, but it cannot be denied, that the energy industry, and especially oil companies, suffer from an image problem. Many Americans are skeptical about the present shortages of gasoline and other fuels. Even in Oklahoma, a State where thousands of citizens work actively in the petroleum industry, I found during the recent recess that a number of my constituents were not convinced that the energy crisis is real. If Oklahomans who live next door to oil workers and in the shadow of oil and gas wells do not fully understand the energy crisis, it is easy to appreciate the difficulty other Americans have in understanding the complex energy shortage which now faces the country.

Mr. President, I have before me some figures which show what has been happening in the oil industry. I believe that these will be helpful to understand the problems. If we look at the number of oil wells drilled over a period of years, going back to 1956, we will find that in 1956 there were 30,730 crude oil wells drilled. Incidentally, 21,838 of these were dry holes.

In 1960, 4 years later, the number dropped from 57,111 down to 44,000. In 1956 the industry discovered and developed 30,730 new crude oil wells. In 1960, that figure was down to 21,186. That is a reduction of about one-third.

By 1965, the total number of crude oil wells drilled was 18,761. And the total number of wells drilled, including dry holes, was 39,501.

By 1970, the number of crude oil wells drilled was 13,020. It had dropped from 30,730 in 1956. This is a reduction of far more than half.

In 1971, the next year, the number of crude oil wells drilled went down to 11,858. The total number of wells drilled, including dry holes, had gone down to 25,851.

In the next year, 1972, there were 11,306 crude oil wells discovered and drilled in the country.

During this period of time the consumption of petroleum, as I have just said, went up at a rapid rate. The average rate of consumption in the country has been going up from 500,000 to 700,000 barrels a day. And yet at the same time that we have been using more and more, we have been producing less and less.

In 1956, there were 2,865,000,000 barrels of crude oil used in the United States.

In 1960, the figure was 2,974,000,000.

In 1965, the figure was 3,302,000,000.

In 1970, the figure was 3,958,000,000.

In 1971, the figure was 4,041,000,000.

In 1972, the figure was 4,168,000,000 barrels of crude oil used in the United States.

During this period of time when we almost doubled the consumption of crude oil, we reduced the number of crude oil wells from 30,730 down to 11,306.

Anyone who looks at these figures cannot escape the conclusion that we were heading toward the very kind of crisis which now exists.

During this period of time, year after year, we imported more crude. The amount of crude oil imported went from 341,833,000,000,000 barrels in 1956 up to 811,135,000,000,000 barrels in 1972. The country today has a real crisis. This situation has existed for many years. It came to public notice as a result of the embargo that was put into effect. Otherwise, it is possible that the country never would have realized the real situation that existed.

There is a widely held belief that the oil industry is a high-profit business. This concept reflects a basic misunderstanding of the industry and an inadequate grasp of the facts about its operations and economics. It confuses total profits with profitability, that is, the rate of return on investment.

Looking at profit in terms of the relationship of earnings to capital invested, oil companies over the last 20 years come in below the average of all manufacturing companies. According to data compiled by the First National City Bank of New York for a large group of oil companies over a 20½-year period—1952–71—the average rate of return on net worth was 11.9 percent, which compares to 12.2 percent for all other manufacturing companies. This so-so record has discouraged investors from making needed capital available for new energy developments. Unless the profit picture improves, investors will continue to stay away from the hazardous petroleum business.

This partially explains why we were not getting more oil wells drilled. Investors did not have the money available with which to drill wells. However, the main reason was that the price of petroleum went so low during this period of time that it was simply unattractive for the investors to take a chance and pay the cost of bringing oil into production.

Mr. President, I have before me a chart showing over this period of time to which I have referred, going back to 1952, year after year, that investments in other types of manufacturing industries produced a higher return than investments made in the petroleum area. It is only natural and logical that investors should look elsewhere for investments rather than to take chances.

Exploration for new oil and gas reserves has declined in recent years primarily because of inadequate incentives. Recently, as profits have increased, this pattern has begun to improve. This improvement will continue so long as the funds for development are available.

Mr. President, during the last decade, the average price of a barrel of crude oil at the wellhead rose about 50 cents, or just over 17 percent. During the same period, prices of oilfield machinery rose 35 percent, well casing by 46 percent, and the average hourly wages in petroleum production rose 57 percent. In addition, the 1969 tax reform bill included a major disincentive to investors when it raised the industry's taxes by more than $500 million a year.

In the case of natural gas, interstate prices are regulated at the wellhead by the Federal Power Commission. This regulation has led

to artifically low prices, encouraged overutilization of gas, demoralized the coal industry, and discouraged the search for new supplies.

So, what I am saying is that all throughout this period when the country was using more and more oil, the Government, rather than providing an incentive to get more production, was doing one thing after another to discourage investment and driving investors into other areas. Accordingly, these actions made it more difficult for the industry to provide for the Nation's needs.

This is one reason that a lot of the developments that should have occurred in the United States took place in other countries, and it is one reason why, if we continue on this course, we are going to see this Nation remain in an energy-deficient status.

Mr. President, in our country and under our system, we know that when prices get high, it triggers a vital increase in production. This would not be significant if we lacked the resources from which to produce. But the fact is, as I have said earlier, that this Nation is blessed with abundant energy resources. So we can be certain that fuel prices will not remain high forever if the energy companies are allowed to increase supplies by plowing back profits into developing new energy sources. The free market will quickly increase the supply and bring costs lower, or at least keep them in line with the rest of the economy.

We have seen this happen time after time in other areas. For instance, only a year or so ago the Nation's supply of eggs was running far ahead of requirements. In the Committee on Agriculture and Forestry, we had legislation intended to bring about an orderly reduction of the Nation's laying flocks. This legislation failed. Accordingly a large number of egg producers went out of business, and now we see a sizable shortage of eggs, and the price has gone up to over a dollar a dozen.

In many respects, the fuel crisis is similar to the beef shortages of last summer. In that situation, when beef prices rose, consumption eased, the supply increased, and prices dropped. The same thing will happen if energy companies are left unfettered by excessive Government regulations. The price adjustment may take longer because new energy sources cannot be developed overnight. Without attractive profit incentives or under a governmental bureaucracy, these increased supplies will not be forthcoming at all.

However we can be certain we will have all the energy we need if we provide the incentives and make it possible for the energy industry to do its job.

Mr. President, the administration and the Congress have the opportunity to take action which will permanently solve the Nation's energy shortage. The course we choose now will have an immense impact upon the economic health and the security of our Nation.

The action we are considering today, as we consider the conference report on S. 2589, is exactly the wrong kind. We are here refusing to face the realities of the situation, and trying to kid ourselves that we can somehow establish artificial controls that will bring about a substantial reduction in the cost of energy to the consumer.

This is the same theory used by the Federal Power Commission over the years, as it pegged natural gas prices to an artificially low level.

In this case the result will be the same as it has been with the case of gas, where the price is abnormally low, production is abnormally low, and as a result the consumers are forced to do without.

What we are saying today is that we would rather be temporarily short of energy, while we carefully work out a way of providing for our needs to the future. I urge that we not choose a short-sighted preventive course but rather that we give the private sector the time and the incentive to do the job. The conference report, if adopted, would be totally counterproductive, and I urge that we send it back to the conference committee, with instructions to bring us back legislation that will provide an incentive, and not a disincentive, to the private energy industry in the United States.

Mr. BENTSEN. Mr. President, this conference report may be good politics, but it surely is bad economics. It tries to repeal some of the basic rules of economics.

This is the product of the same conference committee that brought out a report before on which they tried to attach a so-called windfall profits tax that would have been an administrative nightmare. The problems with that provision were finally recognized by the Members of this body, and they recommitted it.

Mr. President, I have served in this body now for 3 years. During that period, I have sought to watch, to listen, and to learn and to speak out when the occasion demanded. I have sought to represent my State, its constituency, and its interests. In the larger sense, I have sought to do what I thought best for my country.

In those 3 years, I have learned, and I hope I have contributed, in my personal endeavors in committee work, in my remarks on the floor, and in my votes. I have sought to act on facts, on logic and on reason.

Because of that basic posture, far more than because I happen to be from the State of Texas, I find this particular piece of legislation objectionable.

Mr. President, when the Senate last considered this conference report on January 29, I stated that I would vote against it for a variety of reasons which I listed in some detail.

I never had the opportunity to vote against the report because a sufficient number of Senators recognized its defects and recommitted it to conference. Most of the debate at that time centered around an ill-conceived, hastily drawn, and demonstrably unworkable windfall profits provision which would have seriously hindered our efforts to become energy self-sufficient. However, that clearly was not the only reason for its recommittal. There were administrative, procedural, and environmental defects as well which are still very much a part of the bill.

Now we have a conference report with a provision rolling back the prices that has been written in haste and with high emotion, and where many Members of the Senate do not yet have any notion of its provisions.

Maybe it is not a criterion, that we should have an understanding of the provisions of a report before we vote on it, but I would like to think we would. If we have learned anything from the last conference report that was brought in, we ought to be able to take some time to examine this approach, to see what it will do to the economy and to the energy situation.

Mr. President, it may result in a little bit cheaper gasoline. It is possible that it could reduce the price 4 cents a gallon, but I do not think that is what is going to happen, because it only affects new oil and the stripper oil, and that is only a small percentage of the total production in this country.

Nor do I think, in the long run, it is even good politics. I think what it really means is that the lines will get longer at the service stations, and people will go looking for additional service stations trying to find a few more gallons of gasoline.

It is paradoxical to me, when we are talking about self-sufficiency in energy in this country and trying to develop it once again, that we would put the incentives overseas, and, by our action, say that that is where capital ought to go, because that is where the high prices are.

That is really where the high prices are, and that is where we ought to have our concern, and try to do something about it.

I represent an oil State. I understand that sometimes a Senator from an oil State is suspect when he speaks to a question like this. But let me say how I think the problem can be attacked.

If you look at the profits of the oil companies, most of them are occurring on their overseas production. So we ought to be reexamining the tax structure over there. We ought to be seeing if they are juggling those royalties to call them taxes, to get full tax credits instead of having them expensed against their income, and therefore paying lower domestic taxes.

One of the things I propose is to do away with the depletion allowance overseas. Why should we have the incentive over there, when we are trying to develop self-sufficiency here? I say keep it on the North American Continent, and bring some of these companies home. Let them do their drilling here.

Another thing I have proposed is that we change the provisions of future offshore drilling contracts to provide that once they have recovered their cost, we give a much higher percentage of the production to the Federal Government as payment for the right to drill on public lands for private profit, so that we will have a bigger reward for the taxpayers of this country. The major companies have entered into that kind of contract on offshore drilling with 11 other foreign countries of the world. Why shouldn't they do it for this country?

Moreover, we ought to accelerate the sale of offshore leases. We have the Gulf of Alaska, as large geographically as the whole Gulf of Mexico, stretching from the tip of Florida all the way to the tip of Texas, and containing many major structures. We do not know what those structures contain until we drill them.

But the major objective of our Government thus far has been to get the biggest bonus payment we can, and therefore to stretch out the sale of the leases over a long period. Mr. President, we ought to be making those leases and drilling those structures. That is the biggest bridge we can provide until we get to coal gasification and liquefaction. That is the fastest payoff for this country in trying to achieve self-sufficiency in energy.

Mr. President, the so-called emergency bill, which was pushed to the Senate floor in a crisis atmosphere after 3 frantic days of hearings and markups in November and passed before Thanksgiving is not the answer.

It is back without the windfall profits provision but with a hastily contrived provision requiring rollbacks of domestic crude oil prices which raises many of the same problems.

As I have said, Mr. President, this provision is probably good short run politics, but it is very bad economics.

It may be good short run politics because it addresses a legitimate problem of great public concern—oil prices that are too high. It is bad economics because it addresses the wrong oil prices—domestic, not foreign.

Of course, the price of oil in the world today is too high. In December, the typical bids in the world—not domestic markets—ranged from $16 to $17.50 per barrel.

That is simply too much money to pay for a barrel of oil. But before we take a step that is going to get us even further into this mess, perhaps we should remember how oil prices got that high. What allowed the Arabs to triple and quadruple the price of oil in a year's time? And what allowed the Venezuelans to follow suit? And what allowed the Canadians to hit us with a $6.50 a barrel "export tax" which now makes their crude oil cost over $12 a barrel?

The answer is very simple. They have what everyone else in the world needs and, at least for the present, does not have an available substitute. That need not always be the case.

Mr. BENTSEN. Mr. President, in addition to describing how a free economy responds to a shortage such as this, the article mentions that for the last decade almost everything has been done to bring American production down. If we reverse this course, we should be able to make substantial gains on this problem. Substitutes for imported oil can be found.

But how is a rollback on the price of domestic crude oil going to help us find them? **[Sec. 110.]** How is it going to help us get the marginal fields and the deep wells drilled? How is it going to make gasification of coal and production of shale oil economically feasible?

Next week in Washington there will be a meeting of consuming nations. The message which must come out of that meeting is that the world price of oil simply has to come down. Current world prices mean a $50 to $60 billion shift from oil-consuming to oil-producing countries. If prices do not come down, our allies and trading partners are going to be bankrupt, and the poorer nations of this world will be in abject poverty.

But what message will the U.S. Congress be sending the Arabs and their associates if we pass legislation which indicates we are more interested in a supposed 4-cent reduction in gasoline prices—which at best would only be temporary—then we are in self-sufficiency.

And this rollback would not even accomplish a 4-cent-a-gallon reduction. As indicated earlier, the rollback would only apply to 2.3 million barrels a day of the 17.5 million barrels of petroleum being used in this country. So we are talking about one-eighth of the supply. The 4-cent-a-gallon reduction assumes that all the crude oil reduction would be reflected in gasoline and then consider only the gasoline produced in domestic refineries. In addition, it assumes a rollback all the way to $5.25 a barrel. Yet the proponents talk about allowing $7.09 for new oil and stripper well production

But that is what makes this provision more politically appealing. [Sec. 110.] The Congress gets to vote for a rollback to $5.25, and the executive branch is told that it has both the political and legal burden of justifying the higher price of $7—a price that is probably the absolute minimum necessary to bring on the additional production and alternate forms of energy necessary for us to become truly self-sufficient.

The result may be that we will never see that higher production or alternate fuels. I believe that this provision will be a good deal less popular as the lines for gasoline and unemployment compensation get longer.

But whatever the politics, I am very tired of seeing an issue which affects the job, the health, and even the safety of every American handled in as cavalier a manner as this one has been. There are some issues which can be politicized and exploited without doing great harm, but this is not one of them.

I am not committed to maintaining the status quo in our energy policy. Changes should be made. I have proposed altering the Federal offshore leasing program to greatly increase the share of oil and gas production the American citizen would receive from our public lands. I have introduced legislation limiting the depletion allowance to North America, and as a member of the Finance Committee, I intend to take a long, hard look at the way the foreign tax credit is being applied by oil companies operating abroad. I will also support a windfall profits provision to insure that no company or industry makes unconscionable profits of the troubles of this Nation. But all of these efforts should be directed at satisfying more of our energy needs from domestic sources—not less.

The irony of this rollback provision [Sec. 110] is that it falls far more heavily on independent producers committed to domestic production than upon the major oil companies. Independent producers have consistently drilled over three-fourths of the domestic wells in unproven areas.

They are the ones who find the new domestic oil, and they are the ones who operate the stripper wells in our marginal fields. They are also the ones who get hurt the most by this rollback. We penalize the same independent producers who are most likely to sell their product to the independent refinery who, in turn, is most likely to sell its product to the independent marketer.

The House Ways and Means Committee received some interesting testimony earlier this week that $5 billion was expended in foreign oil and gas exploration and development last year—85 percent of that drilling was done by major companies. And there was also $5 billion expended on domestic oil and gas exploration and development—85 percent of it done by independents.

It is these independents with their capital-raising ability who will be hurt by this provision. They finance most of their wells by selling interests to outside investors. If this measure passes, the only way oil prices could exceed these arbitrary limits would be for us to amend the statute. Can anyone blame an investor for not wanting to put his money in a recognized high-risk business whose costs are rising rapidly due to the steel shortage but who will be unable to raise its prices without an act of Congress?

Industry will go where the profits are. This provision will simply encourage a flight of capital from production of domestic energy to foreign energy and from energy to other investments. It will not hurt the prospects for the major companies for last year, Exxon reported an 83-percent increase in profit from oil it sold abroad and only a 16-percent increase from business in the United States. The profits of Texaco and Gulf will not be materially affected. But it will affect the oilman who has been doing what we want him to do—produce American oil.

And worst of all, the adoption of this provision will tell the Arabs not to worry. We really are not serious about this business of self-sufficiency. Apparently, we prefer to be their hostages.

Mr. President, I urge the defeat of this conference report.

My specific additional objections are as follows:

The proposed administration of the program devised under the bill is left to an independent agency which has little clear authority and which provides no guarantee of continuity with the existing programs of the Federal Energy Office. Second, the bill contains a labyrinth of administrative requirements and procedures that may very well hamper rather than help efforts to curb energy consumption and increase supplies.

I am very concerned about the complex administrative and judicial procedures provided for in **section 118** of the bill. The provisions of this section alter considerably the requirements of the Administrative Procedures Act and substitute a confusing amalgam of features contained in both the House and Senate bills. Some argue that the new Federal Energy Administration must be able to act with speed and without the delay of drawn-out administrative proceedings. I, for one, feel that regulations that will deeply affect the most essential aspects of our lives deserve the inspection and comment of the public. Just the brief experience we have had so far with the Federal energy allocation program demonstrates how monstrously complex the problems are when a Federal agency attempts to regulate some 200 million lives. With these programs there is a ripple effect which can magnify a bureaucratic bungle into a major catastrophe for whole segments of our society.

Another point of concern to me is the weakness of the administrative provisions of the bill and the unclear authority that is to be used in carrying out energy conservation programs. [**Sec. 105.**] The bill establishes an independent agency to administer Federal energy programs and then says virtually nothing about how that agency is to be staffed, funded, or integrated with other Federal agencies. Congress has already made considerable progress on a separate bill, the Federal Energy Administration Act, which would provide us with a fully constituted and carefully considered energy administration to carry out what will be the most crucial Federal program to be undertaken in decades. The House will soon be considering this legislation, and the Senate has already approved its version. I believe there is time to wait when the results will be so obviously better and the matter is so clearly important.

Congress has already acted on a number of legislative proposals which deal individually with the problems that this conference report addresses in a collective, haphazard fashion. We should give the legis-

lative process a chance to work so that the programs we create will be well thought out and carefully constructed. The country expects us to act responsibly in the face of this crisis, and I do not believe the conference report we are considering lives up to those expectations.

Mr. DOLE. Mr. President, I have listened with interest to the remarks of the distinguished Senator from Texas (Mr. Bentsen), and I share his views, and perhaps on the same basis, because I come from an oil-producing State.

I think what has happened, in oil parlance, is that the conference has met and met, and it brought forth a dry hole, so far as the conference report on the Energy Emergency Act is concerned. We are right back where we were at Thanksgiving and at Christmas, and we probably will be in the same situation 3 or 4 months from now if events continue at this rate.

Mr. BENTSEN. In oil parlance, it might be more properly termed a blowout.

Mr. DOLE. As the Senator from Texas said earlier, it might be good politics in the short run, but it is certainly bad economics in the long run.

I should like to address myself for a moment to what the conference report in its present form does and does not do.

In the first place, it seems to me that the entire **section 110** would be subject to a point of order. I cannot find any reference to a rollback in either the House or the Senate bill. Perhaps that matter will be raised at an appropriate time.

As I recall our oil situation, approximately one-third of America's crude oil supplies come from imports which range in price from approximately $9 to $11 per barrel. The question will be asked, "Does the rollback have any effect on these prices?" Of course, the answer is, "No, it does not." It does not affect what we import. It does not affect one dime or one nickel or one cent per barrel what we import.

Aside from imports, the remaining two-thirds of America's crude oil comes from domestic supplies. For pricing purposes, this oil is further broken down into two categories: one, so-called old oil, which constitutes approximately 75 percent of our total domestic output; and two, so-called new and released oil and the oil which is produced by marginal or "stripper" wells.

The price of the old oil, which makes up some three-fourths of our domestic supplies, currently averages $5.02 per barrel. Of course, the question will be asked, "Does the rollback affect these prices?" The answer is, "No, it does not." In fact, the rollback would simply confirm today's price levels for old oil, which is approximately three-quarters of total U.S. production.

So, as the Senator from Texas has said—and as I am certain would other Senators who represent, not major oil producers, but the independent sector of the oil industry, employing thousands and thousands of Kansans, Texans, Oklahomans, and others—we have a real concern.

What we have come to in the conference report on the Emergency Energy Act, is that we are dealing only with new and released oil and oil from stripper wells, a total of about 25 percent of domestic production which is split approximately evenly between the two.

Then the question is asked, "Does the rollback apply to these prices?" The answer, unfortunately is, "Yes, it does."

In other words, the Senator from Washington is proposing, and the conferees have adopted, a rollback on what amounts to only about 16 percent of all oil—foreign and domestic—used in this country. The Senator from Washington is proposing this rollback on that oil which is newly discovered or produced by wells which pump less than 10 barrels per day.

I fail to understand, if we have an energy problem and an energy crisis, as some would indicate, what the Senator from Washington expects a rollback of such a small fraction—one-sixth—of the crude oil used in this country to accomplish, or what effect it would have on our efforts to achieve domestic energy independence.

We have been making speeches and otherwise discussing energy independence by the year 1980. We have all discussed at great length windfall profits and excess profits. And I think every Member of this body and the other body understands very clearly that no one should be in a position to make an excess profit or a windfall profit at the expense of other Americans who are making sacrifices, and this applies to the oil industry.

But it is very difficult for anyone, particularly the small independent, with this great degree of uncertainty, the lack of direction on the part of Congress, and the lack of leadership on the part of Congress, to know what he should do in this field of exploration and development. How can anyone invest when, by the whim of a few conferees in Congress, they can roll back the price of oil by some $4 or $5 and then leave it up to the President to make any increase?

If we think about energy independence, we can understand the folly of this provision [Sec. 110] in the conference report. If we are seriously trying to achieve energy independence by the year 1980, then it is easy to see that a great mistake has been made.

I understand the politics of energy. I understand the energy in politics. But I fail to understand what the conference report produces insofar as energy is concerned. It discourages investors in this country from investing with some independent in new exploratory efforts. It takes away not only the incentive but any degree of confidence in price levels that might be present. As the Senator from Texas has just said, the Jackson amendment would perhaps close down a number of stripper wells that have just started to produce.

So I think we have a right to be concerned, not just because we are from oil-producing States but because we see the danger to the entire Nation, consumers as well as producers.

The major oil companies left my State many years ago. They have gone to more lucrative areas. They moved their operations overseas. The Senator from Kansas suggests, as do many others, that we take a look at foreign depletion allowances; that we take a look at the foreign tax credit; that we take a look at other areas. We should also take a look at Kansas industry or the Texas independents to see if, in fact, they have made a windfall or an excessive profit. But we should not launch some misguided attack which will fall heaviest on the independent producers without knowing if there is justification.

The Senator from Kansas is concerned about these points, because the independent sector is important to Kansas and to the Nation. The independent sector has historically drilled the great majority of the new wildcat wells in this country. They rely more on stripper well

production, since more than 90 percent of all Kansas oil wells fall into the stripper category.

Thus, it appears to the Senator from Kansas that the amendment of the Senator from Washington would strike directly at the Kansas independent oil producer. It would threaten the Kansas independent's efforts to expand exploration for additional supplies of crude oil.

It would jeopardize the continued operation of many thousands of stripper oil wells in Kansas—and hundreds of thousands elsewhere. And most disturbing of all, the Jackson amendment would do all this damage to the independent oil industry and to the national interest of having adequate domestic supplies—without actually providing significant short-term price relief for the average consumer. Furthermore, in the long run, the Senator from Washington's amendment would penalize the consumer by restricting expansion of domestic supplies with corresponding dependence on foreign oil and the continued need to pay for it.

So I suppose my questions boil down to this: Why adopt a scheme that will not really provide much relief to the consumer, because it affects so little of the crude oil actually used in this country? Why adopt a scheme that weighs heaviest on the independent segment of the oil industry while not having much impact at all on the giant major oil companies?

Why does not the Jackson amendment instead force a rollback on the prices charged by the major oil companies whose profits are such a great concern to the Senator from Washington? It would seem to the Senator from Kansas that a rollback on the prices of Exxon or Gulf or Standard or others would mean more to the average citizen than some misleading proposal that affects only about one-sixth of our crude oil and penalizes the Independent oil industry in Kansas and elsewhere.

The language of the conference report speaks of giving the President discretionary authority to increase certain crude oil prices by up to 35 percent. Furthermore, the report indicates that these increases are contemplated for oil produced from stripper wells, from secondary and tertiary recovery processes and other more costly methods.

But why give the President the authority to make these increases? If the need is so clear—as everyone is saying in describing why the conference report should be agreed to—if the need is so clear, and if we understand that without an increase we are, in effect, reducing total oil production, why does not Congress write it into the conference report? Why not go ahead and do it if we understand the need is there?

But even if such an increase were granted and assuming a price of $7.09 were allowed, does not this price represent a rollback on new oil and stripper oil from current levels in the $9 range? Yes, it certainly does.

As a Senator from an oil-producing State, I share the view expressed by the Senator from Oklahoma. I think the price of $10 a barrel is excessive. I think the price of $10 a barrel, whether it be from a stripper well or some other new oil, has gone up too rapidly, and I have told some of my constituents in the State of Kansas who are in the oil business they ought to be realistic, they ought to be responsible and reasonable, and that the consumer has a great interest in what happens.

I have told them that the best way to damage their interest is to let the price of oil seek some arbitrarily high level and then the long arm of the Federal Government, as proposed by the conference report, reach out and cause great damage.

I would suggest that, in effect, we have said to the independent oil producer and anybody in America who wishes to invest, "We are not certain what may happen next week, we are not certain what happened last week or what might happen the following week so far as the industry is concerned."

I do not know how we can ask independent oil producers to go out and explore for more oil and gas when they really do not know what the rules may be from one week to the next or from month to month. Will they have $9.51 prices as they do today—or $5.02 or $7.09? That is the question, and it is an important one. There is great uncertainty in the industry, and it arises from the lack of leadership in this time of crisis either by the executive branch or by the legislative branch. It makes it very difficult for the small businessman, the small independent producer, to know which way to go.

He has heard the politics; he has heard the rhetoric. He wants action—but meaningful action that will mean more energy for America. I think most responsible businessmen and those who work for the independent oil-producing industry understand the problem. But these are serious questions and I think they deserve serious answers if we wish to have adequate supplies of energy by 1980 or before.

I thought recommittal of the conference report earlier this session was totally justified. It appears to me now, that instead of an improvement, the present conference report after reemerging from the conference committee is at least as objectionable and poorly conceived as the previous version. So I would hope at the appropriate time that this matter would be sent back to the conference and that the conferees would understand that our goal in America is energy independence. And I would hope the conferees will realize that energy independence will not be achieved by destroying an industry or crippling the spirit of an industry which is now engaged in exploration on a large scale for oil and gas.

So whenever the vote may come, today, tomorrow, a week from Tuesday, or the following week, next month, whenever it is, I hope that we keep in mind the record of the independent oil producer.

The Committee on Finance will begin hearings next week on responsible and effective measures to deal with excessive profits and obtain adjustments without destroying important segments of the energy industry.

The Finance Committee will be seeking to make certain that those who unfairly profit in any way because of the energy crisis will be dealt with effectively. There must be assurance that excess profits will either go to pay windfall taxes or be plowed back into the industry for greater exploration, research and development, or other positive goals.

I think the American people have a right to expect leadership from this Congress and I think the American people are waiting and will continue to wait for that leadership. If there is such a crisis in America, Americans must wonder why we spend so much time trying to pass the Emergency Energy Act and why in the process we have set about

to destroy an independent industry in this country which employs hundreds of thousands of men and women.

As we face up again to the serious question I would hope if the provision is not subject to a point of order that the entire matter will be recommitted to conference where it can be studied and perhaps the politics left out and the energy put in.

Mr. DOMENICI. Mr. President, first I wish to associate myself with the remarks of the distinguished Senator from Texas (Mr. Bentsen) and the distinguished Senator from Kansas (Mr. Dole).

I am not one who has second thoughts now about having voted to recommit the bill, because I did not vote to recommit it. There were those concerned about the independent small oil producers in this country that thought a vote not to send this bill back for further consideration would be proper because of the very vague and uncertain windfall taxes, which would certainly put them out of business. What I thought would happen has come to pass. The Senator from Texas (Mr. Bentsen) used the word "cavalier" in describing the position that the conference took with respect to the whole problem of the economics of the small independent producer versus the huge integrated oil companies, which solved all the problems in a couple of days with a rollback. **[Sec. 110.]**

I just want to make sure that every one of us who is going to consider this matter understands a couple of things about it which are very clear to me:

No. 1, it discriminates, without question, in two ways. First, it discriminates in favor of foreign oil, which we are now so concerned about, because there is no effort, and no possibility in this bill, to reduce the ever-increasing cost demanded for foreign petroleum coming into this country. In that respect, as we move from that, we move toward further rises in the price they seek from us and, second, further and further help develop the blackmail approach as a result of the resources of foreign countries, because they know they can get whatever they want from America in this approach.

Second, and equally important, it discriminates in a violent way against the nonintegrated producer and in favor of the integrated and big company which has production in America and overseas, because the big company that has production both here and there has part of the production frozen and as to that which comes from overseas, it is free to join in passing on right here at home the price which Venezuela and the Middle East pass on to it.

In that respect, most certainly one could conclude that the price will come down. But I ask this: How is the price going to come down and stay down if there is a shortage? By this approach we are going to minimize domestic exploration and maximize importation from the outside, and the importation will be at a higher price. So how can we here fill the demand existing from much of the country for lower prices when we say to those who want to charge the higher prices, "We are for you," while the independents all over the southwest of our country, who are exploring to find ways to get oil, even to going to secondary and tertiary levels to which they otherwise would not go, are told "Unless you can do it at about half the price that Venezuela and Canada and the Middle East charge, you cannot do it at all?"

It seems to me there is only one logical answer. Either the shortage is to be filled by America or the shortage is to be filled by foreign oil.

If that is the case, how can we have further production of domestic fuel when the price is frozen or rolled back when at the same time we pay a higher price for foreign oil, and when we are in this instance accelerating and enticing and discriminating against the independent producer in this country? To me the logic is inconceivable.

I admit that the prices of crude oil certainly have gone too high and too fast and that we must work in some way to see if we can get back into some kind of economic balance which will promote domestic exploration and development and at the same time we do not let this country become increasingly dependent on the whim of the foreign producer and on the whim of the foreign country in terms of price, as new sources of supply for this country become less.

It seems to me the approach—and I am not saying the approach in this bill, if everybody understands it, could not be the policy of this land—is a policy consistent with what everybody is saying we should not do, for it is not a policy directed at abundance, but it is a policy directed at an absence of abundance. It is not a policy of lower prices that develops the approach of finding alternate sources of energy, but one which will increase our dependence on higher-priced foreign petroleum products.

In conclusion, let me say that if indeed this is the course we seek and it is adopted as a national policy, let us understand that more venture capital that is going into high-risk situations is finding that it is going to have to produce new situations. The independent who is both exploring and finding new sources in the field, when faced with this competition from Venezuela and other places, will slow down, and another kind of rollback will take place, and that is a rollback in activity.

If I were convinced that, in spite of that, we might have a reasonable expectation of price stabilization to help the American consumer while moving into alternative energy sources, I would vote for such an approach, but it seems to me everything about that approach works exactly contrary to what we have been trying to do.

I compliment the Senator from Texas (Mr. Bentsen) for his remarks and his very expert analysis of the difference between an integrated company and the American producer, the independent exploration company, for indeed the latter has as his only source of revenue the investing public of America. It is those people who will find the domestic crude oil. It is principally the independent here. That is not the same as when we talk about the integrated company or when we talk about the foreign invested money that will produce foreign sources of supply.

I yield the floor.

Mr. Helms. Mr. President, in my judgment the conference report on S. 2589, the Emergency Energy Act, should not be approved by this body. Everyone knows the controversial history of this conference report, the unusual parliamentary proceedings which attended its birth, and the discrepancies which remain even after reconsideration. The distinguished Senior Senator from Arizona (Mr. Fannin) detailed these on the floor the other day, expressing his frustration at the unconventional tactics which surrounded the shaping of this legislation.

It is clear that this legislation which was conceived in haste, marked-up with slipshod recklessness, and which brought us into direct con-

flict with the wishes of the House of Representatives. Even now it is filled with duplication of effort, ambiguity of authority, and administrative nightmares. I have no doubt whatsoever that it will never accomplish what it sets out to do.

Moreover, I am convinced that the bill is wrong in its substance as well. If we were really serious about energy conservation we would seek every substantial means of cutting down on wasted energy. It was brought out on this floor that forced busing of school children was a luxury that we could no longer afford in a time of shortage. A substantial portion of this body agreed that it is simply too great a waste of gasoline to continue forced busing at a time when it is proposed to shorten school hours, cut down on heat in schools, and even to close schools, for extended periods. The House agreed completely and passed an amendment similar to the one I proposed in the Senate to cut out forced busing.

Yet despite the fact that a substantial portion of this body agreed three times to the proposition, and the other House agreed overwhelmingly, the House amendment was eliminated in conference. I recall a newspaper story at the time which reported—and, of course, I realize that not all newspaper reports are correct—that the distinguished chairman of the Interior Committee had argued in conference that to include the antibusing amendment would delay the bill in the Senate and perhaps prevent it from passing. At any rate, the amendment was deleted. It is also a matter of history that the bill was delayed anyway, indicating that the fears of many Members of both Houses were directed to other parts of the bill.

All of this goes to show that we are perhaps not really serious about the energy shortage. Yet the bill itself moves to involve the Federal Government more heavily in the decisionmaking about energy sources and use. It moves us toward rationing, it moves us toward Government control of personal mobility, and it moves us toward Government control of the essential business decisions of private enterprise.

Everybody is properly concerned about the energy crisis, with its shortages of gasoline, fuel oil, and gas. But, the last thing we need, and the worst thing that could happen, would be for the United States to move toward a nationalized oil industry. Yet, in this moment of frustration, that suggestion is being heard more and more often. It will be a sad day for America if it ever comes to pass.

It is not popular to dispute the loud political condemnations of the oil industry that are being heard with increasing fury. It is a natural desire on the part of the public to want to hear us politicians propose easy answers to difficult problems. The trouble is, there is no easy answer to difficult problems. The trouble is, there is no easy answer to this problem. We are not going to solve it by Federal controls, or by finding a political scapegoat. We have got to face up to the hard facts of life.

For many years now, our Federal Government, by one device after another, has been limiting the exploration for new domestic sources of petroleum. Therefore, production has been limited. Instead of developing new sources at home, we have been turning to foreign countries, and importing larger and larger amounts of oil. Our shortsightedness is now catching up with us. The crunch is on.

I hold no brief for the oil companies. I do not own even one share of stock in any oil company. And I do not like to pay high prices for

gasoline any more than any other citizen does. Still in fairness, I think the American people ought to bear in mind that they still have more fuel available to them, at less cost, than any other country in the world.

My own view is that we ought to get busy with exploration for more sources of domestic petroleum, build some new refineries, and stop all of the name-calling. Otherwise, no matter what laws Congress passes, or what regulations the Federal Government imposes, the situation is going to get worse.

We ought to compare our situation, unpleasant as it is, with that of any other country in the world. Then we would be made aware of a fact that many people are forgetting—that the free enterprise system of competition is our best hope. Indeed, it is our only hope.

I realize that it is popular to vote to roll back prices. **[Sec. 110.]** But I say we must look to the future. Such a move can have no other result than a further reduction of exploration and production of petroleum, thus further delaying the hope of an adequate supply in the months and years ahead.

I am sure I will be criticized for these thoughts, but I am convinced that there is no adequate substitute for the free enterprise system. Only through production and competition in the marketplace can we hope to enjoy lower prices for the goods we buy, whether they be gasoline, food, or whatever. We cannot improve upon the free enterprise system.

Mr. McGovern. Mr. President, the new conference report on the Energy Emergency Act is a great improvement on the conference version which we recommitted on January 29.

But it falls far short of what we need.

The significant addition to this legislation is its provision for a roll-back in the price of fuel. But it does not roll back far enough. **[Sec. 110.]**

I applaud the improved version of the unemployment compensation guarantees for working men and women displaced by energy-related shortages. Nearly a quarter of a million people already have been put out of work. **[Sec. 116.]**

And I am pleased that the wholesale retreat on the fight for clean air and clean water has been substantially modified. **[Title II.]**

It is, however, wholly inadequate to characterize this bill as any sort of major victory for the consumer, or for the Congress.

Under the formula we are asked to approve, the price for crude oil currently exempt from price controls—new oil—would be rolled back to $5.25 a barrel with provisions allowing the administration to raise it back up as high as $7.09 a barrel, but the President's recent $1 a barrel increase on old oil would be allowed to stand.

The effect, according to advocates of this proposal, would reduce gasoline prices by 4 cents a gallon and save consumers $4 billion a year.

It is my belief, and that of many other Senators, that the price of controlled—old—oil should also be rolled back to the December price level. That would permit another 2.5-cent reduction in the retail price of gasoline and save the consumer $2.5 billion more than what the conferees recommend.

Mr. President, I do not see the logic in retaining the $1 per barrel price increase for old oil, particularly since it constitutes 71 percent of our domestic supply of crude oil. A higher price on already-flowing oil simply is not an incentive to the increased production of new oil.

What this rollback formula would do, in essence, is to write into law a decision by the administration which is unsupported and unsupportable, and is not in the public interest.

The only suggestion of justification that this administration has offered for its $1 per barrel price increase for old oil is that oil producers need more money to invest in new production.

I think that the record increases in profits posted by the major oil companies last year provide more than enough basis for increased investment—and they got that even at the old prices. Beyond that, the increases retained in this conference report boost the price of crude oil well beyond what the industry itself says is necessary to stimulate exploration and production.

In December 1972, after an intensive 2-year study, the National Petroleum Council projected that the industry would need $4.48 per barrel, using its "worst case" assumptions. Why should the Congress now give them a bigger windfall?

At the level I have suggested, $4.25 a barrel for old oil and $7 a barrel on new oil, the average price for all domestic oil would be about $5.25 a barrel. Allowing for inflation, this is about what the industry said it needed.

My point, Mr. President, is that Congress should hold the oil companies to their word. We should not force the consumer to pay more than what the companies themselves say they need. Their excess profits ought to be not ratified but removed.

Mr. THURMOND. Mr. President, just over a week ago this body expressed its disapproval of a windfall profits section in the bill that is now before us again.

That vote of 57 to 37 sent the conference report back to the conference committee which has now, through the efforts of the distinguished chairman of the Committee on Interior and Insular Affairs (Mr. Jackson) written a completely new section to roll back domestic crude oil prices.

Aside from the fact, or at least my opinion, that the conference committee has overstepped its authority in adding a completely new section that has not been considered by either body, and has ignored proposed legislation on windfall profits now being heard by the appropriate committees of both bodies, the price rollback requirement in the Energy Emergency Act would not accomplish its stated objective. **[Sec. 110.]**

That objective, according to its sponsor, is to roll back gasoline prices by 4 or 5 cents a gallon and, I presume, comparable savings in the price of other refined products. However, what would it actually accomplish?

First, in taking such indiscriminate and punitive action against the entire oil industry—the shotgun approach—the rollback will hit hardest at the independent sector of the industry rather than the major integrated companies, the apparent target.

I believe everyone wishes to see fuel kept at a reasonable price. Certainly, the Senator from South Carolina does. But unless we are very careful in handling this matter, more harm can result than benefit.

Mr. President, as far as consumer savings are concerned, it will prove to be a cruel hoax. Even if crude prices are rolled back to the level called for in the rollback section, the possible cut in gasoline prices would be at best 1 or possibly 2 cents a gallon. The advocates of the

proposal know that each dollar increase in crude price represents about 2½ cents in the price of gasoline at the pump. The rollback promises lower prices, but inevitably would lead to far higher prices and crippling shortages, and this is what concerns me deeply.

Mr. President, independent producers have found more than 80 percent of the new domestic oil in the last year, not the international companies, and independents operate most of the stripper wells in the United States. This action would grossly discriminate against the 10,000 small explorers and producers who are the best hope of increasing the Nation's energy supply and thereby bringing about an ultimate reduction in the price of fuel.

A rollback of new and stripper oil discriminates against the independents in favor of the international oil companies which would continue to be permitted to flow through the uncontrolled cost of imported oil that is priced at two to four times the proposed rolled back price of domestic oil.

Mr. President, it is a certainty that the result of the conference proposal would be substantial reductions in domestic crude oil supplies which will be replaced by foreign oil costing far more. It is a certainty that this action will accelerate our already intolerable dependence on foreign oil, a condition the conference report professes to deplore.

Mr. President, consumers today are paying 20 to 30 cents a gallon more for gasoline than they were less than 2 years ago. This is due primarly to increased prices for foreign oil, and to higher refining and marketing charges.

Therefore, the claim that this rollback of domestic crude oil prices would mean a substantial saving to consumers is incorrect. If there is a saving, it will be temporary and amount to no more than 2 cents a gallon on consumer products. Within a short time there will be no price saving, and the only effect on consumers will be further dependence on foreign oil.

The level of U.S. dependence on foreign oil has doubled in just 5 years. Under the conference proposal, it will double again, in even less than 5 years. Domestic production has been declining, because of depressed and inadequate prices.

The rollback of new and marginal oil prices will aggravate this decline precipitously.

There has been much talk in the political community about "contrived" oil shortages. The conference proposal would result in a politically contrived shortage of a severity never before imagined. This is the way many people knowledgeable on the subject feel. The American people should understand now who should shoulder the blame.

Mr. President, this is a very complex question. It is one deserving of the utmost consideration of the Congress as well as the Nation, and it is one that should be looked into most carefully. It should not be gone into without thorough consideration and adequate hearings on every facet of the matter, because what we ultimately want to do is two things: One, provide the necessary fuel for the people of America, and the next is to provide that fuel at a reasonable cost.

In trying to achieve those goals we must be careful that we do not take some step that will react and produce an opposite effect or will not produce the goals we set out.

Mr. BARTLETT. Mr. President, when there was discussion on this conference report this morning it was said that perhaps some of those who oppose the adoption of the conference report are guilty of foot dragging and are really not interested in providing solutions to the need of the Federal Energy Administrator for certain controls and certain powers that he does need.

I think nothing could be further from the truth, because, if the provision [Sec. 110] in this report which provides for the rollback and control of prices were removed. I would venture to say that all of those who have shown opposition to the entire report would be in support of it today and would have been very happy to have passed it before the Christmas recess if it had been just strictly the FEA provisions. Second, I would like to point out that those who are being characterized as foot draggers at this time on the matter of energy were those who, to a great extent, opposed the conference report before when there was another provision in it which called for a rebate on the so-called excess profits.

Some of us who were considered guilty of foot-dragging and of taking up a lot of time and of putting on a minifilibuster at that time, feel we were vindicated when, after lengthy hearings after the hearings were resumed after the holidays on the matter of excess profits, and when those provisions were better understood by the general public and by Members of the Senate, the vote to recommit was a substantial 57 to 37.

I would also like to point out that many of those of us who are showing opposition to the conference report today, and I think will later on, are people who really want to see the energy crisis resolved, who want to take a number of actions which will lead to an increase in domestic supplies of oil and gas and coal and other energy sources in the United States. Most of those of us who might be accused of foot-dragging are those who voted for the Stevens-Gravel amendment in the Alaskan pipeline bill, which legislated the Alaskan pipeline, and which is going to bring oil into the lower 48 at a much earlier date than otherwise.

Also, Mr. President, many of the ones who were criticized for dragging their heels are the ones who supported the stripper well amendment which does provide a free price for about 12 percent of the crude oil production in this country. And in my mind, they still support this amendment which provides for additional oil for American consumers. It also provides an opportunity for additional oil right away because many of the stripper operators are making investments in their small wells and are successful in enhancing and increasing this production.

These same people feel, I think, that it makes sense to pay the operator of a stripper well, a small marginal well, $9.50 a barrel for that production rather than have that production plugged and abandoned and then replaced with foreign oil that, on a spot market basis, can cost as high as $22 a barrel.

Mr. President, I would also point out that those who have been criticized as foot-dragging are those who want to help solve the prob-

lem of deficient energy in this country by deregulating the price of new natural gas in interstate commerce. Many of the economists who have been before our committee have testified that this is the root cause of the energy crisis, that this is more than any other cause the reason that we do have a short supply today. And those same people who have been criticized for foot-dragging are the ones who are in favor of the proposals to site refineries and powerplants and for the siting of deepwater ports to provide additional refinery capacity for the oil and to permit the foreign oil to come into this country at cheaper rates.

In addition to this, Mr. President, I would like to bring out that this roll back provision **[Sec. 110]** addition to the FEA proposal in the conference report—and I am referring to the rollback of crude oil price provision—is very unusual, and it is quite far-reaching. Other than the price of oil, I cannot recall any particular commodity or natural resource that has a price that is set in cement, set in a legislative act.

In this case it would set the price at approximately $5.25 a barrel.

Second, it is very unusual, because it rolls it back from the current price of approximately $9.50 a barrel.

So, on both of those bases, it is a very far-reaching and restrictive type of price control. It would be very difficult to change it. And it is bound to be in existence for a long time.

In addition to rolling back the price to $5.25 a barrel for domestic oil, it does provide that it can be increased upon request by the President under certain difficult conditions up to, but not to exceed, 35 percent of the $5.25 price.

But increasing the price beyond $5.25 means following the Administrative Procedures Act rather than just being at the discretion of the President or his agents.

A change is made in the Administrative Procedure Act just to apply to this matter of controlling the price of crude oil. That change shifts the burden of proof to the President who must support his price with substantial evidence rather than just prove that he has not been guilty of arbitrary capriciousness.

This is another departure and another innovation that I believe should be the subject of hearings and the subject of discussions throughout the country to see whether or not this particular proposal, S. 2589, is really in the interests of the people of this country.

Also, there is another result of this conference committee report on S. 2589, and we do not know yet what that amounts to. For example, it would reduce, and I would think rather sharply, the tax revenues from the producing States. What that will amount to, I do not know. However, I certainly am confident that the Governors of those States, as they have been submitting their budgets to the legislatures of their respective States, have counted on this revenue and that the legislatures which are in session today are planning to use that money in the appropriations they are making for the next fiscal year.

Another thing—and we do not yet have an answer for that either, and it will certainly take a few days to obtain it—is how much less money will be available for investment in the domestic oil and gas industries. How much less oil and gas reserves will be found, because of

this reduced price and reduced incentive and reduced amount of money to invest in the oil industry.

Mr. President, that will certainly have an effect on the investments that might otherwise have taken place in other fuels.

One of the values of a free market price is that it will tend to bring on other fuels, such as the extraction of oil from sand or shale, or liquefaction of coal, or coal gasification; all of which will reduce the sulfur content that sometimes violates the environmental laws.

To roll back crude oil prices at this time would tend to perpetuate our dependence on foreign sources for oil imports which has proved many times in the past, and currently to be unreliable.

I agree with Dr. Thomas Stauffer, research associate with the Center for Middle Eastern Studies of Harvard University, when he said that we are possibly "mortgaging our future supplies of energy in order to enjoy a very short run dividend in the form of lower prices. This may be good politics, but it is bad economics."

Dr. Stauffer went on to point out that the hidden costs of energy shortages can be much much greater than the visible costs of higher oil prices. It is better to pay more and have energy than it is to pay less, and then to get less, and hence cause men's and women's jobs to be lost.

To adopt this price control ceiling provision would be to ignore history and to repeat the disastrous precedent of price regulation in the natural gas industry. In 1954, price controls on natural gas were initiated in the name of consumerism, but the results have demonstrated that they have not been in the consumer's interest. The policies of Chairmen Swidler and White have promoted the waste of one of our cleanest energy sources, and at the same time have discouraged the exploration for more of this highly desirable fuel.

Because the price was so low, gas has been improperly used. It has been used by many industries under boilers rather than made available for consumer use in households.

It seems we do not learn our lesson. We had cheap, plentiful energy, but by trying to make it cheaper, we now have the shortages of expensive energy.

We all have the desired goal of attaining energy self-sufficiency. I think it should be defined as having at least 85 percent of total consumption derived from domestic production. By any definition, price rollbacks are not the way to achieve self-sufficiency.

I might just go back and review quickly the history of the price of oil. First, because the price of gas was controlled and set at a very low level, and because gas is a desirable fuel, it competed very strongly with the price of oil and the price of coal, causing the prices in both cases, of oil and coal, to be lower than they otherwise would. Hence, supplies were lower, because there was less money to invest in the development of each.

In addition to that, there was a program called the mandatory import program, which was designed to provide a prop or support for our domestic industry, recognizing that it was important for us to have a strong domestic oil and gas industry, so that we would have ample supplies to take care of our needs, particularly in time of war, to provide for our national security, but also to provide for a strong economy.

But the mandatory import program was not administered that way. It was used, instead of as a prop, as a club over the heads of the oil companies, so that they would not raise the price of oil when there was a need to do so because of increased costs of labor, amounting to approximately 25 percent over a span period of some 13 years; because of the price of steel going up 40 percent during that same period, and the cost of a well to be drilled going up 75 percent.

The time period I am talking about is a period of 13 years beginning in 1957. The price of oil in 1957 was $3.09 a barrel, and then it went down, and it stayed under $3.09 until 1969, the 13th year of that period.

When it got back to $3.09, the oil industry had had its costs increase about $500 million because of the reduction of the depletion allowance from 27.5 percent to 22 percent.

In addition, at that same time, there was a desire by people from the consumer States to lower the $3.09 price, and, because of this pressure, the President of the United States asked Secretary Shultz to appoint a committee which was called the Reeder Committee, to make a study and submit its findings and recommendations to a Cabinet level Committee on Energy.

All of this was done, and the majority of witnesses before the Reeder Committee recommended that the barriers provided in the mandatory import program be removed, and to allow the flood of cheap foreign oil come into this country.

It was suggested in their report that this action would reduce the price of oil in this country to $2 a barrel. After 13 dry years of $3.09 and less a barrel, $2 a barrel would have so severely crippled the oil industry that we would have been at the mercy of foreign countries long before we were, and we would have been reduced to a much weaker condition.

So I think the history we have of both the oil and the gas industries shows very clearly that this is not in our interest today. What happended in the long, dry period of oil profits in the sixties? The number of independents was reduced from about 20,000 to 10,000. There was little incentive for exploration in this country, so the larger companies, the multinationals, went overseas for their exploratory operations. This, of course, fulfilled the desires of those in some of the consumer States, because the large companies were successful and were able to provide foreign oil at low cost and in large quantity. Up to a certain point, of course, this is very good; but when the amount coming in was such as to weaken the domestic industry severely, then it was obvious that the foreign oil would very quickly become expensive, and supplies would be in small quantity, as we see it today.

The Reeder report was strongly objected to by many people, who pointed out that we would be at the mercy of foreign nations, so far as our supply of energy was concerned. The Reeder committee argued that the supplies of the world were so large that the price would always be low. They just forgot one very important fact, and that is that political decisions can be made that will override economic estimations.

These proposals will make us more dependent upon foreign oil imported from the Middle East. We will be going down the same road again, by subsidizing foreign production, by arbitrarily restricting

our own domestic supply, and by insisting on the purchase of foreign oil that is available.

If we are to maintain our worldwide commitments and remain a strong nation, the best alternative to importing oil is to strengthen the domestic oil industry at the fastest possible rate, rather than to weaken it by removing the price incentive.

Certainly we know that we are going to import more foreign oil, and to import more than we are now, and we also know that we will not be able to import it at the cheapest possible price. We know that if we strengthen our domestic industry, our chances to do this will sooner be improved.

This measure seems to be designed to perpetuate and exacerbate the present energy crisis. It almost seems that those who support this measure are not seeing the results that have occurred before and that will happen again. To me, that is a kind of negative approach to the solution of the energy problems.

But the United States was not built on negativism. It was built on bold, positive steps to provide a plentiful supply of energy at the least expensive cost. This we want to achieve again, but we are not going to achieve it by sacrificing and going back on recent efforts to increase the supply of energy.

One of the witnesses before the Senate Committee on Interior and Insular Affairs commented that we are confronted with acute shortages in key areas and it seems imprudent, if not irresponsible, to reduce incentives for production until the implications and ramifications of such action are better understood. Otherwise, we shall resemble the farmer who decides to eat more in the short run by eating all of his seed corn. His belly is certainly more full for a few months but the price for such a short-lived bounty can be long years of unpleasant deprivation.

When controls are installed, it takes time to perceive the mistakes that have been made. And it takes additional time to rectify the mistakes even after they are evident. With this particular bill, the mistakes that can be corrected or the amount of correction that can be made is limited to 35 percent and then virtually made impossible to achieve by the other requirements that must be met.

There would be lengthy hearings and lengthy litigation that could have the effect of preventing any increase from the price of $5.25 per barrel. We cannot afford the cost and the delay of more mistakes.

Mr. President, for a moment, I would like to clarify a common misconception about domestic crude oil production, and natural gas production for that matter.

The production from existing wells in the United States is constantly declining. To look at a graph of the annual production of crude oil in this country is misleading, because it shows that production increased until 1970 before the annual producing rate began to decline.

Actually, that curve could be split into two curves the sum of which would be the total curve. One curve would represent the decline from year to year in the producing rate of wells that existed on a base date. The other curve would represent additional production due to investments made to increase the producing rate by the drilling of new wells,

workovers, secondary and tertiary recovery, and by other engineering breakthroughs.

In other words, if it were not for the continuing activity to increase production, the annual production would decline year after year. Lately, our increases to the producing capacity have not kept pace with the decline rate. The reason—we have not been active enough domestically—there has been a failure to provide the proper incentives for sufficient domestic ventures.

The proposal to roll back crude oil prices will erase the incentive that has existed over the past few months that has generated tremendous activity in the oil fields in the United States to increase production. That production will have to be replaced by expensive and unreliable foreign oil.

It is very important for a businessman to have stability in his business because as he looks at the future to decide on the amount of his investment, he has to make certain calculations, and if he has a question as he does that, about the future income that he might expect from his production from oil and gas wells, he is going to have a question about what he will plan to invest in the drilling of new wells for oil and gas. So this bill's proposal puts into jeopardy the carefully thought out and planned budgets for the year 1974. Either action will delay it, but either delaying action to defeat this proposal or putting it into effect if it passes and becomes law, will prevent a rather sizable amount of money from finding its way into the ground in the form of new oil and gas wells to add to the amount of energy this country has available.

A couple of days ago, my staff learned of a group of investors from my State who had planned 10 days from now to drill a well that would replace a well with collapsed casing that had been plugged and abandoned. This was a well on which there was a history and good information on what to expect it might produce.

To drill this well will cost $80,500. This men told us that they would not be able to justify drilling this well if they could not receive at least $9.23 for crude oil to be produced from the well. Otherwise, they would receive a better return on their money if they put it in the bank at 5.5 percent interest.

Mr. President, this is only one of hundreds of wells that will not be drilled if the price of crude oil is rolled back.

I think everyone who has heard about the rollback price control provision [Sec. 110] has visions that this is going to result in a rather sizable rollback in the price of gasoline. But that is not going to be the case.

Let us investigate just how much the consumer is paying for the extra incentive provided by a price for new oil of $9.50 per barrel and the price of $9.50 for stripper oil and matching old oil barrel for barrel with the new oil. How much of a burden is it, really? In committee, and today on the floor of the Senate, the distinguished Senator from Louisiana (Mr. Johnston) brought out the fact that approximately 29 percent of the domestic oil production is from wells with uncontrolled prices.

We import approximately 33 percent of the crude oil consumed in this country. So as a percent of the total oil consumed in the United

States, both foreign and domestic, $9.50 a barrel oil represents only 20 percent of the total consumption. Even if we rolled back the price of this $9.50 per barrel oil to $5.25 per barrel, the resulting reduction in the price for gasoline at the pump would only be 1.4 cents per gallon.

So if we use 10 gallons of gasoline a week, we are paying only 14 cents less for this new price to encourage greater drilling for oil and gas and to assure the fact that the life of the stripper wells will be lengthened and so that we will not be plugging a producing well. With the price of oil at $5.25, they cannot make any money or operate at a profit and we will have to replace it with $22 a barrel oil, which we are importing from a foreign country.

This 1.4 cents per gallon is what is greatly stimulating domestic activity and allowing wells to be drilled that otherwise could not be justified, and permitting stripper wells to continue to operate which would otherwise be plugged and abandoned.

If by some miracle the 35-percent increase provision could be activated by the President, and I have pointed out the problems he would have in raising the price from $5.25 up 35 percent, the price then is about $7.09; and if that is the price of new oil at the stripper well, then the savings we might expect if we received it all back as a consumer on the price of a gallon of gasoline, would be about eight-tenths of 1 cent. So, here again, the incentive would be taken out of the effort of the independents and the other companies to drill the number of wells that need to be drilled in order to be self-sufficient, for only eight-tenths of 1 cent or 1.4 cents, as the case may be.

Last Saturday, the Committee on Interior and Insular Affairs had four noted energy economists testify. They said, in essence, that it would be irresponsible for Congress to legislate a crude oil price rollback at this time. They stressed that more information on the effects of the rollback must be gathered.

I hope that this body will not act on a "seat-of-the-pants hunch" in such an emotionally charged issue. All we are doing is creating more uncertainty for those who could help to increase the supply of crude oil domestically.

Mr. A. V. Jones, the president of the National Stripper Well Association, has said that the current price level for stripper well oil has permitted 250,000 barrels per day of stripper well production that would not exist today at the old prices. The 250,000 barrels per day of additional oil produced from stripper wells is approximately equal to the amount of the daily consumption that has been saved by shutting down gas stations on Sunday and requiring a national speed limit reduction to 55 miles per hour. Whether or not these stripper wells continue to produce is directly dependent upon the price of oil. It depends on whether the revenues from the crude oil sold exceed the cost to produce that well. When the well starts to lose money, it is shut in and/or abandoned. To me, it does not seem to be in the consumer's interests to force currently producing domestic oil wells to be shut in and abandoned merely because the crude oil costs $9.50 per barrel to produce, which is the case with some wells.

The demand for the 250,000 barrels of stripper oil will continue even after those wells are shut down. This means that we will have

to import an additional 250,000 barrels of foreign crude, if it is available.

Somebody please tell me how paying up to $20 to $22 for foreign crude oil to replace $9.50 domestic crude oil is in the consumers' interest. Not only is the price of crude oil doubled, which will raise the price of gasoline for the consumer, but also, the dollars are being drained from this country. Rather than being put into the hands of Americans, to in turn be put into the hands of other Americans to sustain jobs and productivity, the dollars will be put into the hands of foreign countries.

An oil well is somewhat like a person: As it becomes older, it costs more to keep it operating. So the point in the life of a stripper well at which it must be abandoned is directly dependent upon the price of crude oil.

A petroleum engineer on my legislative staff has estimated that for an average well, $9.50 per barrel crude oil extends the producing life of that well from the 6.5 years at prices of less than a year ago to more than 10 years at current new oil prices, with consumers getting an extra 4 years of production from that well. The total amount of oil that this stripper well produces in its lifetime is increased by 20 percent, a very substantial factor.

This price rollback **[Sec. 110]** hits hardest at the independents because they end up with practically all of the stripper wells. In 1973, independents increased their drilling and workover activity more than the majors. Most drilling in Oklahoma and Texas is done by independents. The drilling activity in each of these States increased as follows: in Oklahoma, 28 percent; in Texas, 17 percent. That is compared to a nationwide increase of less than 10 percent—actually, 9.8 percent.

Another favorable offshoot of the higher prices allowed for new oil and stripper oil is that there is an incentive to work over a well to increase its production. There is an incentive to acidize the producing formation with acid, or to shoot it with nitroglycerin, or to perforate it with bullets in a zone that heretofore was not considered commercial, or to clean the reservoir so that production will be enhanced and increased.

All these actions can yield immediate results, immediate increases in production, if successful. That is right. We do not have to wait 2 or 3 or 4 years for these investments to increase production. With the proper incentive, they will continue to occur this year, as they have over the last 3 or 4 months. There has been a tremendous burst of activity in the oil fields. Let us not squelch that activity by our actions here today.

Mr. President, oil activity is booming in Oklahoma. For example, in the Osage country, the county of Osage, increased activity is a direct result of the oil and natural gas price incentives that exist currently.

An article in the Tulsa World of February 2, 1974, points out:

> Leases that were passed in recent years are suddenly attractive. Pipelines that were not economically feasible are now being laid across the prairie. There is more leasing and drilling in this northern Oklahoma area than in years . . . Prices of $9.50 per barrel of newly found oil and up to 65 cents a thousand cubic feet of gas is the difference.

These are low-cost wells, with a high probability of success, which in the past have not been drilled because at old prices they would have been unprofitable.

Our actions here today may prohibit the consumer from benefiting from the production from not only these wells but also hundreds of more across the country that will not be drilled at the rollback prices.

Mr. BARTLETT. Mr. President, I should like to correct some inaccurate and misleading statements that may have been made by various government officials concerning the production of stripper wells.

It has been claimed that if a stripper well is producing perhaps 12 barrels—8 barrels more than the amount that would qualify it for additional price—a person would be tempted to reduce the production in order to qualify for the higher price, to hold back his production—in other words, to cheat. This is impossible, because in order to qualify as a stripper well, a well must have produced 10 barrels or less on a lease basis last year. So any actions now could only be taken toward the future, next year. I do not think that necessarily would be a very enterprising thing to do.

The conference committee for the Mandatory Allocation Act wrote the stripper well provision in such a way as to preclude any consideration toward reducing the producing rate to become exempt from price controls or from allocation controls. The conference committee required—and the law now reads—that any well must be classified as a stripper well during the previous calendar year before it becomes exempt from allocation and price controls. Therefore, an operator would have to decrease his production for a full year before he could receive an uncontrolled price—a most questionable economic temptation.

Also, it is, by the same provision of law, a Federal violation—a felony—to reduce the producing rate of a well below the "maximum feasible rate of production and in accord with recognized conservation practices."

Mr. President, there is clearly much incentive to not reduce the producing rate of a well in hopes that it someday might be classified as a stripper.

Mr. President, let me point out that this price ceiling measure plays into the hands of the international major oil companies at the expense of the small independent producers of the United States and ultimately the consumers of energy in the United States.

The major oil companies in this country are crude oil buyers. They own large portions of the refining capacity in the United States and refineries must buy crude oil, much of it from small independent producers who historically have drilled about 80 percent of the wells in the United States. It is the independent producer that needs the increase in price of crude oil as well as the majors to have the revenues to drill the wells needed to provide us with sufficient energy.

What happens as the independent producer because of lack of proper incentive drills fewer wells and discovers less oil? We must buy foreign oil to replace that domestic production that is lost. Who sells the foreign oil to us? The major multinational oil companies.

I have pointed out before to this body that the profits of domestic operation is for both the majors and the independents have been in-

sufficient over the years. The majors even now with the large profits that have been reported say that the largest portion of these profits was earned from oil produced overseas.

Mr. President, I maintain that the price ceiling proposal will have exactly the opposite effect of what is contended by its sponsors.

Let us look at what goes into making up the price for a barrel of crude oil in the United States. By telegram, on Monday, February 4, the Chase Manhattan Bank indicated to me that 33 percent of the cost of crude oil was from imports at $11 a barrel delivered price. Only 19 percent of the cost of crude oil came from decontrolled domestic crude oil at approximately $10 a barrel. Only 48 percent of the cost of crude oil came from controlled domestic crude at $5.25 a barrel.

If you combine all of these prices on a weighted average to get the average cost per barrel of crude oil in the United States, you get $8.05. Of that $8.05 a whopping $3.63 is attributable to imports. The $2.52 is attributable to controlled domestic crude at $5.25 a barrel and only $1.90 is attributable to the cost of uncontrolled domestic crude oil.

It seems evident to me that if we were truly working in the consumers interest we would be working to reduce that $3.63 portion of the cost of a barrel of oil. The way to do that is to replace barrels of oil that are being imported with cheaper domestic production. Instead, we are here today talking about removing the incentives to do just that.

All this measure does is to insure that more oil will be sold to the United States from foreign sources. The consumer loses out because he will eventually pay a higher price for gasoline at the pump because higher foreign crude prices roll in.

Mr. President, I want to emphasize that this so-called bonanza, if I may be facetious, for the consumers will be very short term. And it will be only about 1½ cents at the gas pump. The consequences of this short term action would be higher prices in the near future as the imports of higher priced foreign oil are increased to make up for a lack of domestic supplies. That is if foreign oil is available at all.

As I have already discussed, if domestic supplies and foreign supplies are not forthcoming the devastating but very real result would be high unemployment and reduction in the growth of this country.

Mr. Long. Mr. President, the point this Senator would like to know about this matter is how one would go about deciding what a small producer with a rather large number of stripper wells would be permitted to receive for his oil. A man was in my office a few days back and he showed me his records on about 50 wells he has in one of the less profitable fields of Louisiana. There are a lot of fields of that sort. He is producing less than 3 barrels a day, but he had about 50 wells, so each one, multiplying his 50 wells by 2 barrels a day, that is 100 barrels a day, and that is enough to help.

In a month that would be 3,000 barrels and, of course, 3,000 barrels will make a lot of gasoline. This is a drop in the bucket compared with the overall problem but it helps and when one thinks in terms of hundreds of thousands of men producing from a large number of wells, although each produces a small amount of oil, it does help substantially.

How would that man go about knowing just what he is entitled to charge for his oil?

Mr. Bartlett. He is just going to be up in the air because he has been getting in the neighborhood of $9.50 for a few months. He has had a great incentive to look over his small wells and decide which ones he might fracture with nitroglycerin, or acidize, or reperforate, but he has incentive to increase that production.

But if he is compared to a man who has the same amount of production from one well there is a tremendous amount of difference in his costs. To the consumer it does not make much difference. A barrel of oil is a barrel of oil if it is of the same quality. So it is of great interest to the consumer to make sure the stripper, high cost, marginal oil not only is going to be continued, but will have the incentive to add to it and get additional oil. But if he has no incentive to invest because the prospects are good that this price could be rolled back to $5.25 a barrel, then the consumer will have to pay to replace those barrels lost either by not working over or lost by plugging—the consumer will pay at rates of spot production as high as $22 a barrel.

Mr. Long. When a man works over his well to bring it back into production or to extend the level of the well, he makes a considerable investment, which he would expect to write off over a period of months or years—oftentimes over a period of years. Does he have any assurance just because he is permitted, let us say, to charge, as of now, $9 for a barrel of oil, that being the world market price, that if the Arabs decide that they like this market enough to see fit to end the embargo, he is going to be permitted to get that price just because he is permitted to charge it? Is he not confronted with the prospect that after he makes the investment to rework the well and to incur the additional expense which would be paid out over a period of time, he is not necessarily going to get the so-called $9 or so-called higher price when the Arabs decide to end the blockade and decide that perhaps they would like to sell more oil in this country, and thereby produce the world market price in this country?

Mr. Bartlett. The distinguished Senator from Louisiana makes a very good point. The history of foreign production has had a number of examples where the production has been disrupted for various reasons. I think oftentimes we think of the disruptions that have resulted from Arab nations, but this could come from a very friendly nation such as Canada, in which just recently production was reduced because it was in their best interest to reduce it, and also they increased the price because it was in their best interests to get the best price they could. We do not fault them for that.

The little producer that is looking forward to domestic oil that is still cheaper than the world price or replacement price does not know he is going to get that, so he is not going to make that investment until he is assured that conditions are stable in the oil industry, as far as the domestic price is concerned.

Mr. Long. Should not we be carefully concerning ourselves here that we are providing adequate incentives for all those who we hope would be producing oil to be moving in that direction, to drill more wells, and to expand their productive capacity, to insure increased production, and also so we do not see people waiting in their cars four and five blocks to get gasoline?

Mr. BARTLETT. This is the fear I have. I fear many people think all we have to do is to ration, sacrifice, cut back in their own use, and that will solve the problem.

Unless we make the effort to bring on more domestic crude oil, gas, and other resources, to bring liquefaction and gasification of coal, extraction of oil from sand and shale, we will not become self-sufficient and foreign countries can just arbitrarily jack the price up and can then cut off our supply whenever they want to embarrass us or submit us to their will as far as foreign policy is concerned. That could become the case if we are not self-sufficient.

Mr. LONG. Has the Senator seen the article that appeared in this afternoon's newspaper quoting Mr. Swearingen, who is an officer of the Standard Oil Co. of Indiana, better known as American Oil Co. or Amoco? It is my understanding that that was a company which was going ahead to make major investments, running in the hundreds of millions of dollars, to open up the tremendous oil shale potential in this country by building a large plant to manufacture oil out of the enormous amount of shale which exists in the West. In that area there is enough energy, if we can find the key to make it available, to provide this Nation's energy needs for hundreds of years.

Mr. BARTLETT. That is right.

Mr. LONG. He told me some time ago that he felt that if the long-term price of oil was to be $7 a barrel, his company would be justified in going into the manufacture of oil from shale; and, looking at a price in that range, he concluded that they would be justified in making the investment that would lead it into the opening up of those vast resources for the American people—not subsidized, but making a free enterprise investment to make energy available to the people of this country. If we are now going to be told that oil is not to be permitted to sell at that price, what does that do to their investment?

I just read in that newspaper a statement by the same executive that it looks as though they will not be able to move into developing the shale, which is a tremendous resource of the future, which somebody should be moving to enter.

I say that as a Senator representing an oil-producing State. It does not necessarily benefit Louisiana to open up that vast resource in the West. The interests of Louisiana would not necessarily be served, but the national interest would certainly be served by opening up that vast resource of energy to the people of this country.

If the price is rolled back to the point that it discourages the development of new reserves, it makes it unsafe for people to make those investments, and what does that do to our future potential?

Mr. LONG. That is a concern we ought to be thinking of. The oil companies are the principal energy companies, and if they are to find the funds to open up these new reserves, they are going to have to make enough money to pay for those out of earnings. While we can find lenders who are willing to make loans on good business investments, the record in the oil industry tends to be that they would want a mortgage on something which one has which they know to be of value if they are to lend the money one needs to go into something which might be successful, and then again involves a substantial risk. They would lend money on the birds one has in his hand, one might say, so he could be encouraged to look for the birds in the bush, but they do not want to

lend on the birds in the bush, because that is speculative, one might put it. It might be productive, and then again it might not.

Mr. BARTLETT. Mr. President, the Senator is exactly right. The revenues of the oil industry are such that the borrowings on what they are capable of making from the outside are not commensurate with other businesses such as manufacturing. However, it is still interesting to note that over the last 6 or 7 years the oil industry has spent almost the same amount of money each year, about $8 billion, in exploration and development. And as time went on, their outside borrowings went up considerably because they were not able to generate internally the amount of money required. So, they were stretching their ability, as far as they could, to borrow more and more capital. However, one cannot borrow on that bird in the bush. One has to produce oil and have bankability, and that is judged on the proved reserves that have been developed and are produced and produced at a certain price.

When that price changes, the value of those reserves change automatically.

Mr. LONG. Mr. President, that is why it is standard for a person to borrow money on the well he has in order to provide the money to drill the next well.

Mr. BARTLETT. The Senator is exactly correct.

I would like to have the Senator's comments on this. I have not had a chance to research it, and I do not know whether I am even able to do it completely. However, this bill is very far reaching.

I cannot recall any other price control provision that was a rollback, one that would also set a fixed price, like setting it in cement, and leave it where it could only be increased to the level of 35 percent, and that might be impossible.

It would not be able to be raised as high as the person who would have the responsibility of raising it, the President of the United States, might deem to be necessary.

That would seem to be more restrictive and to be a provision that could really backfire on this Nation and be very difficult to change.

Does the Senator from Louisiana have any comment to make on that?

Mr. LONG. Mr. President, it might be very unpopular. It might be necessary, however, once one makes it that way. I can see the Senator's point. In other words, having fixed the price low, assuming that the price would be proper in the first instance, when the costs go up, then the burden is on someone to change it.

Can one count on the Congress showing statesmanship and wisdom to do something that might be politically unpopular? That is not always the reliable thing to depend upon.

Mr. BARTLETT. Mr. President, I have said before that the effects of a shortage of oil supplies is much more severe than the effects of increasing prices on our economy. Bluntly, it gets down to the matter of slightly reduced spending money from the weekly check or no check at all. Studies by Chase Manhattan Bank and Wharton indicate that the effect of reduced oil supplies could raise the unemployment rate to 7.7 percent if we are short 3 million barrels per day. That 2½ million people that would be unemployed on account of reduced oil supplies.

Mr. President, I ask the Members of this body how many of our citizens will be unemployed on account of the 1.5 cent incentive paid at the gas pump?

Mr. President, the hazards to the economy are much more severe with shortages of energy than they are with higher priced energy.

Dr. Stauffer indicated that generally the multiplier effect of $1 worth of energy yields approximately $20 to $21 to our gross national product. He estimated that a 2-million barrel shortfall of crude oil would yield a $50 billion decrease in the economy, but a $2 per barrel increase in the cost of crude oil would add only $12 billion toward inflation. Also, the higher price paid for crude oil is kept within the American economy going from one pocket to another; and the transfer effect is minimal compared to the complete loss of dollars spent abroad for foreign oil to replace domestic shortfall.

Certainly, if a person of low means is burdened because of the high cost of fuel to heat his home and drive his car to work, this legislative body, the other House, and the executive branch can act to remedy that. However, the testimony we had showed that the impact on our economy is more severe because of the loss of sufficient energy than it is because of the higher prices necessary to bring about in a free market a building up and increasing of that energy to self-sufficiency.

Mr. President, I would like to leave one point with the Senate, that no fuel is like enough fuel.

The PRESIDING OFFICER. The question is on the adoption of the conference report.

Mr. HOLLINGS. Mr. President, on balance I support the conference report and intend to vote for it. I had been concerned about the coal conversion section, **section 106** of the report, in that I feared that the language of that section might be interpreted to give the Federal Emergency Energy Administrator excessively broad discretion in his determinations of whether or not to convert major fuel burning installations to coal. I therefore offered an amendment in the conference to provide that no such installation could be ordered to convert if adequate supplies of other fuels were available. By that amendment I meant explicitly to insure that in the distribution of oil throughout this country the very first priority would be given to public health considerations. Thus if low sulfur fuel were available to a plant Federal officials would have been prohibited from allocating it out of the hands of such plant and converting the plant to coal when the result would be an adverse effect on human health. While that amendment did not carry, I was assured by many of the conferees voting against it that the basis of their vote was that they regarded it as redundant. In other words, they intended that under the case by case balancing approach by **section 106** the criterion of nonavailability of low polluting fuels was intended to be met before conversions could be authorized. I therefore rest assured that this criterion in their exercise of the the Federal energy officials will observe balancing test and recognize that it is our intent that they do so.

Mr. MANSFIELD. Mr. President, upon the conclusion of business tomorrow, the Senate will adjourn until noon, Monday, February 18, 1974. The House will adjourn this evening until Wednesday, February 13, 1974. Thus the Senate will take 5 days off, the House will take 3 days off to afford Members the opportunity to return to their constituents.

The concurrent resolution which has been adopted by the Houses of the Congress provides for this recess. Through an oversight on my part, the resolution does not contain the language providing for a recall by the leadership of the Congress. It has been and will continue to be the leadership's intention to include this authority for all recesses and adjournments of the Congress in the future.

The sense of urgency for such a provision of recall by the leadership of the Congress was greatly reduced because of the shortness of the recess period, and by the fact that the House today agreed to pass the legislation which was adopted unanimously in this body, the so-called Magnuson bill, 3 days ago.

That will be of some effect, I believe, in the alleviation of the plight of the truckers. The measure has the approval of the administration, and it tends to break down to a 30-day time period which would have to be gone through automatically in relation to this aspect of the ICC.

Mr. HUGH SCOTT. Mr. President, which we have already passed.

Mr. MANSFIELD. The Senator is correct. So it is on its way to the White House now. As I say, the sense of urgency for such a provision of recall by the leadership of the Congress was greatly reduced because of the shortness of the recess.

There will, however, be only 2 working days, Monday and Tuesday of next week, that neither House of Congress will be in session.

I just wanted to make that statement. The Senate will be in tomorrow. It is hoped some progress can be made in educating the Senate and the people about the 47 amendments which the distinguished Senator from Arizona alluded to, and that when we do get to a vote on this measure—and I assume it will be shortly on our return—we will all be well versed in all the facts.

Mr. FANNIN. Mr. President, if the Senator will yield, if I may comment on the statement of the majority leader—and I appreciate what he said—my reference was to 40 provisions, not 47 amendments.

Mr. MANSFIELD. I thank the Senator.

Mr. HUGH SCOTT. Mr. President, with the indulgence of the distinguished majority leader, I think it ought to be said that the majority and minority leaders do hope for, and will do our very level best to bring about, a vote at the earliest possible time consistent with the rules of the Senate and the privileges of all Senators.

Mr. MANSFIELD. I agree.

Mr. ALLEN. It does not seem to the Senator from Alabama that the objection that was made this morning to agreeing on a definite time for voting on a motion to recommit, and then the final vote on the conference report, has hastened the time for the vote. The Senator from Alabama was wondering if the distinguished majority leader might possibly be disposed to renew his request for unanimous consent, since it is obvious that a Tuesday vote is an earlier vote than we might anticipate if it is left without a unanimous-consent agreement.

Mr. HUGH SCOTT. Before the distinguished majority leader replies, I might point out that the objection to a unanimous-consent request could only have the effect of delaying the vote, not expediting it.

Mr. ALLEN. Yes, that occurred to the Senator from Alabama.

Mr. HUGH SCOTT. And regardless of any requests to the contrary, that is the fact; no agreement is no assurance to anyone as to when we will have a vote, if ever.

Mr. MANSFIELD. I agree with both Senators. I have given the matter some thought, and if Senators will indulge me, I prefer not to make that motion at this time unless those Senators are present who objected earlier today.

I have talked informally with Republican members of the committee, and I am of the belief that we will have no trouble on Monday a week in getting the agreement offered at that time, and, with their concurrence, approved.

Mr. ALLEN. I thank the distinguished majority leader. I am reassured by his statement.

Mr. FANNIN. Mr. President, I would hope, in accordance with what the distinguished majority leader has said, that we can arrive at an early vote, but I know that we had an understanding, and we were very hopeful that we could at this time make the agreement; and I assure him that from the standpoint of our desire we did. But I cannot give him any assurance that that can be done, because as one Senator I cannot give such assurance.

Mr. MANSFIELD. No, but I am sure, knowing the Senator as I do, that he will make every effort to assure that what we attempted today will become effective on Monday week.

(Mr. Bartlett assumed the Chair as Presiding Officer at this point.)

Mr. HANSEN. Mr. President, will the distinguished majority leader yield for a question?

Mr. MANSFIELD. Yes.

Mr. HANSEN. I would just like to observe, Mr. President, that there was a good-faith effort, as no one understands more clearly than the distinguished majority leader, on the part of those representatives of the Senate conferees on the energy bill to reach an accord, and their views unanimously, insofar as the representatives were concerned, were transmitted to the distinguished majority leader, and I am sure undergirded his making the unanimous-consent request this morning that we agree upon a time certain—4 p.m. Tuesday, February 19—to vote on two issues, the adoption of the conference report and/or the recommittal of that report to the conference committee.

I had occasion, earlier this afternoon, to observe that there was, in the opinion of this Senator at least, some demagoguery displayed this morning. I will leave it up to each individual Member to agree or disagree with me. But understanding, as I hope most Senators do, the extremely complicated provisions of this bill, it was not without some justification that there were those of us who felt that it was not fully understood, and I think that that statement has been borne out in the debate today on the basis of interrogatories that have been propounded by various Members who were conferees on that energy bill.

Moreover, the fact that the responses were not immediate, and that almost invariably, in order to make certain that an accurate response was given, it was necessary to turn to a staff man, prompted me to observe that certainly not more than 11 Senators of the 100 who occupy positions in this body could have had more than a very cursory understanding of this energy bill.

Later this afternoon, it was my privilege to hear the present distinguished Presiding Officer of the Senate (Mr. Bartlett) discuss at length with the distinguished Senator from Louisiana the ramifica-

tions of the impact that the rollback could have upon domestic oil production in the United States, and I hope that every Senator who votes when this issue finally does come before the Senate for a vote will take the time to read what was said by those two most knowledgeable energy experts. In the opinion of the Senator from Wyoming, they happen to know what they are talking about.

My point, Mr. President, is that failing, as we did this morning, to achieve a unanimous-consent agreement, despite my personal willingness to do all I can to see that the Senate has an opportunity to vote on this issue as quickly as I can conscientiously, and my belief that there is a sufficiently good understanding vote by Members, I must say that I cannot guarantee that this same persuasion on my part will characterize the attitude of every other Senator in this body on either side of the aisle.

So I would just like to point out to my good friend the distinguished majority leader that I personally will do my best to cooperate, as I have earlier indicated, with him in getting the unanimous-consent agreement, but I would hope that it might not go unnoticed that those who spoke with what semed to be some small degree of intemperance this morning would not be unaware of the fact that their remarks may not have been appreciated, perhaps, as much as they had hoped that they would be.

To my good friend from Montana I say simply that I will do my best to cooperate with him in trying to see that this issue, first, is understood by the people and by Congress, and then is voted upon just as expeditiously as possible, but I would feel constrained to observe that not everyone is entirely happy with some of the things that were said earlier today. If it should come about that we do not find ourselves able to agree by 4 p.m. on February 19, 1974, Tuesday after next, I hope that he might understand the blame for those who may make that accommodation impossible is not one freely assumed by those who may be constrained to object.

Mr. MANSFIELD. Mr. President, I appreciate the remarks of the distinguished Senator from Wyoming (Mr. Hansen), but it is my belief that all Senators on both sides—all sides today—spoke in good faith. Certainly the fact that the distinguished ranking Republican member of the committee, the Senator from Arizona (Mr. Fannin), pointed to the fact that there were 40 amendments—new amendments—new proposals in the conference report, that should be elucidated and made better known to the membership, was a point well taken. Also it was stated that it would take a few days, really, to tell the Members of the Senate and the country just what the factors involved were.

I would assume, as I usually do, having such high regard for the Senate and its Members, that what would be readily attainable today would very likely be readily attainable on Monday, February 18, at which time, the Senate concurring, the unanimous consent request will once again be offered.

May I say that today we have spent more than 6 hours on debate on the subject of the conference report.

Mr. FANNIN. Mr. President, I want to express my appreciation to the Senator from Montana and to say, as I said earlier, that there were 40 sections in the report that should be studied, because one of the

Senators thought we would just talk about the one provision. That was my point at that time and what I referred to later in discussing this matter with the distinguished majority leader. I will do my best, as I have stated to the Senator frequently, to try to come to a satisfactory understanding for a vote.

As I said during the afternoon, I was pleased to hear some of the debate that did bring up questions that should be very seriously considered. So I just say at this time, as I said before, that I can give no assurance other than my own assurance that I will cooperate in trying to bring a vote to the Senate floor at the earliest time consistent with what I think is proper in the handling of this legislation. I certainly will cooperate with the majority leader.

Mr. MANSFIELD. I appreciate the statement just made by the Senator from Arizona. I think the record should show that he was the one who initially came forward and indicated it would be possible to work out a time agreement, at which time a vote could take place, or votes could take place, and I commend him for his initiative.

Mr. FANNIN. The majority leader is correct and I regret it was not possible to do so.

Mr. MANSFIELD. So do I.

Mr. FANNIN. Mr. President, let me make the record clear that before voting on the proposed legislation, every Senator is entitled to know the provisions in it, in order that he may decide whether he wants to oppose or support the conference report.

Second, the time involved in making it possible to have a complete analysis of the stipulation in the proposed legislation between now and when the Senate reconvenes on Monday, February 18, is certainly needed.

Third, the House of Representatives is now out of session and will be, as stated, until February 13. The House did not have the votes before adjournment to force the bill out of the House Committee on Rules, and there is no assurance that that can be done before the Senate returns. So there is no intention, or no assurance, at least, that there will be any delay by the Senate.

Finally, we who have asked for these discussions and analyzation of the conference report are acting in the best interests of the Nation. We are not engaged in a filibuster. There is no filibuster at all. We are engaged in making certain that the provisions of the report are known and understood before the report becomes the law of the land.

We are fulfilling the duties our constituents elected us to do. We are fulfilling the duties imposed upon us as Senators by the Constitution. I feel that it is highly essential that we do thoroughly discuss this measure. I sincerely hope that every Senator will read what has been placed in the Record, because it is most valuable in determining the problems and also the benefits of the legislation.

I hope that every Senator will consider the stipulations that I refer to at this time.

Mr. ALLEN. Mr. President, I wish to commend the distinguished Senator from Arizona for his efforts to bring the conference report to a vote. I think he has made a generous offer to agree to vote on the measure on the Tuesday following our return from the recess.

It seems passing strange to the Senator from Alabama that the Senators who say they want to vote on the conference report are the

ones who are not agreeing to setting a time certain for a vote; whereas, the distinguished Senator from Arizona, who is said to be filibustering the conference report, is seeking to get a time agreement for a vote on the conference report. It certainly seems strange that the Senator from Arizona is being charged with delay, when he is trying to get the conference report to a vote at a given time. I commend the Senator from Arizona for his position, for his request that the vote be set for just as early a time as we are going to get a vote by discussing it. I feel that past experience has demonstrated that the quickest way to get a vote is to set a time certain, which the Senator from Arizona is willing to do. I commend the distinguished Senator from Arizona.

This is one of the most glaring objections I have to the tremendous price increases that have come in this whole field. It is certainly an unfair increase. I want to get the price of propane, along with that of gasoline and diesel and other petroleum and natural gas products, rolled back. I think the most glaring and outrageous price rise has been in the field of propane. I believe that permissible price increases are going to be spread out more equally and more evenly under the provisions of the conference report, and it is a very commendable report at that point.

The wisdom of the Senate in sending this conference report back to the conference committee some days ago has been justified, because this is a much better conference report than first came out. It underscores the position of the Senator from Arizona in pointing out that possibly improvements can be made if an opportunity is given to consider and study the various aspects of the report.

I might say that I am going to vote against recommitting the report. I am going to vote for the report. One reason, among many, is that consideration has been given by the conferees to rolling back the price of propane, which has been allowed to increase in price some 350 percent; whereas, in other areas there has been a much smaller increase. As the Senator from Alabama understands, the oil companies have been allowed to set their increase as much as they pleased, and a disproportionate share of the permissible increase has been placed on propane.

Propane is the poor man's, the rural man's, the noncity man's natural gas. He uses it for every purpose—for heating, for his chicken houses, for the small industries on the farm.

So I commend the Senator from Arizona for his willingness to set a time and his demand that a time be set. Still, he is charged with delaying the report, which the Senator from Alabama cannot understand.

Mr. Fannin. Mr. President, I wholeheartedly agree with the distinguished Senator from Alabama. I thank him for his kind remarks.

We have made this attempt and have made it again and will be pleased if we can make it again.

I share his great concern about propane prices. I know quite a bit about that business. For the last several years, I have been trying to get additional quantaties of propane. Not only have I asked for a research program on what can be done with respect to propane that is now wasted in many parts of the world, but also, I have talked about the salt caverns that can be washed down. We have them in my State,

and probably there are some in Alabama and Minnesota and other States, and they can be utilized for the storage of propane gas. We are in short supply, and the price has gone completely out of reach.

We have to weigh that against the other stipulations in the proposed legislation. Although I am vitally concerned and certainly felt very pleased with the opportunity we had of trying to roll back the prices on propane, at the same time we must realize the consequences. If we wanted more propane, if we wanted to lower the price of propane, we could deregulate natural gas. Seventy percent of the propane is produced from natural gas. Only about 30 percent comes from refinery processing. So it is important to realize that although we do have that one stipulation in the bill, which the Senator very much agrees with, we have some very costly stipulations in the bill that I feel will be much more harmful.

We are talking about rolling back the incentive for the production of more oil. We are rolling back the price on the stripper wells. We have many stripper wells throughout this Nation, and the Senator from Wyoming has reported on that subject very eloquently. I think there are about 85,000 in Texas alone that produce an average of 3.8 barrels a day. It is a very costly process. As the distinguished Senator from Wyoming stated, one of the independent companies that reported about this processing stated that for every barrel of oil they produce, they have to dispose of two barrels of brine, which they have to dump into the gulf. In other words, it is a very expensive procedure. The distinguished Senator from Wyoming can explain this very thoroughly, because he has contact with these people.

I assume that the Senator from Minnesota desires to speak, and I do not want to detain him, so I yield to him, and I will then continue my remarks.

Mr. HUMPHREY. I thank the distinquished Senator from Arizona.

Mr. President, I associate myself with the remarks of the distinguished Senator from Alabama, particularly as to propane. The people in my State are complaining, and rightly so, about the unbelieveable price increase. The Senator from Alabama is right when he says that, for all practical purposes, it is the rural man's and the poor man's natural gas.

For example, in the poultry business in our State, it has been very costly. Many of our farm homes are heated with propane. Many of our small plants in small towns use propane as a fuel. It has become almost prohibitive to use it, and it has cut sharply into whatever earnings they had. It has really been most unfair. I thank the Senator from Alabama for speaking as vigorously as he has on this matter.

I also agree with the Senator from Alabama that the bill that came back is a better bill. I did not vote to send the bill to committee, and that perhaps was an error of judgment on my part. I felt rather strongly about the profits that some of the oil companies have been making and thought we ought to do something about that. I hope we shall do something about it, through the committee system we have in the Senate—the Committee on Finance—and the House Ways and Means Committee.

I believe the bill that has come back is a better bill. We need action on the bill, and we need action for one reason: The energy problem is

the top, No. 1, issue that concerns the American people today. We are not going to get perfect legislation, and we know it. But in the meantime, we have to have something that will give the people in the administration the tools they need to do the job, and then we can hold them fully accountable.

I happen to think that Mr. Simon is doing a good job with the tools he has to work with, and I want him to do an even better job. I have visited with him personally. I have had good cooperation from his office, and he has appeared before committees I have had the opportunity to serve on. I think he is a responsible and a responsive public official.

I thank the Senator from Alabama for his comments.

Mr. ALLEN. Mr. President, I thank the Senator for his fine comments on this most important subject.

Mr. HANSEN. Mr. President, let me say that there has been some excellent dialog here in the Senate today that will contribute significantly to a clearer understanding of what the so-called energy conference report can do and might do to, as well as for, America. I would hope that Senators not able to be here this afternoon will take occasion to read what is in that Record.

I spoke earlier about the number of Senators who have a very great, indepth understanding of the energy business in America, and I certainly know that all of us will be better informed if we take occasion to read what they have said.

Mr. President, let me say further that one of the interesting agreements reached by the conferees, not unanimously but by most of the conferees, was to invalidate the the so-called stripper well amendment which was part of the Alaska pipeline bill. Despite the fact that there was no such provision in the bill before the Senate, nor was there any such provision in the bill before the House, the conferees in their wisdom decided to strike down that amendment.

I call this fact to my colleagues' attention, suggesting that they give serious consideration to the fact that, in the opinion of the Senator from Wyoming, a valid point could be raised as to the germaneness and the propriety of the conferees in embarking upon a new, uncharted area insofar as action by either body of the Congress was concerned previously, including this provision in the conference report.

I have no further observation to make on that other than to make note of the fact that it seems to me a question could validly be raised as to the propriety and the germaneness of that provision.

Mr. President, I know that we will be in session tomorrow. I am certain that all of us want to try to help resolve this very vexing, very troublesome problem before the people of the United States. I know that a great many Senators are rightly and properly concerned, as is the Senator from Wyoming, with rising prices, with inflation; but there are some of us who are even more concerned with the very distinct possibilities that what are already short energy supplies could become even more difficult to come by if this conference report is accepted.

This afternoon, the record will disclose there was a great amount of testimony from knowledgeable people, not alone in business, but in positions of economic scholarship as well, attesting to their nearly unanimous conviction that this indeed will be one of the results of the implementation of this conference report.

I was in California during Christmas time, and I remember very well seeing headlines in the Los Angeles Times in Christmas week, 1973, which stated that there were some 32,000 people out of work in the State of California as a direct consequence of the energy shortage in America.

No one wants to pay a higher price for fuel, no one wants to add any increased heat to the already too rapidly burning fires of inflation, but I can assure you, Mr. President, that there is one catastrophe that could exceed even that in its chaotic impact upon the American way of life and upon our ability to continue the credibility and believability that we presently enjoy worldwide, and that would be to have our economy grind to a halt, to have more people thrown out of work, to have our ability to keep our commitments worldwide diminished because of a lack of energy.

We already know that, with the Arab oil boycott, it was necessary to ship from Norfolk, Va., oil to fuel our fleet in the Mediterranean. Think, if you will, Mr. President, what could happen to America if we further disrupted our domestic petroleum supply.

It has been pointed out that 13 percent of all the oil that this country domestically produces today comes from stripper wells.

I say that I can think of nothing—no one single thing—that could be more devastating to those goals which we hope America soon shall achieve than to be denied that precious flow of oil upon which most of the jobs, most of the productivity, and indeed the standard of living of America, depend.

Mr. FANNIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE DEBATE OF SECOND CONFERENCE REPORT, FEBRUARY 18, 1974

Energy Emergency Act—Conference Report

The Presiding Officer. Under the previous order, the Senate will now resume the consideration of the conference report on S. 2589, which the clerk will state by title.

The legislative clerk read as follows:

The report of the committee of conference on the disagreeing votes of the two Houses to the bill (S. 2589) to authorize and direct the President and State and local governments to develop contingency plans for reducing petroleum consumption, and assuring the continuation of vital public services in the event of emergency fuel shortages or severe dislocations in the Nation's fuel distribution system, and for other purposes.

Mr. Fannin. Mr. President, most of what I will say at this time has been said before on the floor of the Senate but I trust this condensed recap will be helpful for all of us to better understand the facts we must face in considering this legislation, the energy bill S. 2589 conference report.

In the last few months we have seen unprecedented increases in the price of oil, both imported and domestic. These increases are being reflected in product prices. As a consequence, there is a great deal of consternation and confusion over the cause of the price increases. In general, many Members of Congress and others conclude that there must be some conspiracy to raise the price. Most persons who have carefully studied the subject, however, can generally agree as to the real reasons behind these developments and as to policies which should be followed in the future with respect to both oil and gas prices in the United States.

For many years the United States lived "off the shelf" in the sense that we consumed vast quantities of oil and gas which had been discovered in the 1930's, 1940's and 1950's when the cost of doing so was much cheaper than it has been for the last 10 or 20 years. In other words, the price of oil and natural gas did not reflect its then current replacement cost, and we did not in fact replace the oil and gas we were consuming. Commencing particularly with the first closing of the Suez Canal in 1956, many in the industry spoke out loudly about the perils of such a policy, but these warnings were generally ignored.

There were many who argued there was no need to develop expensive domestic energy resources when cheap foreign oil was available and would always be available. We have now found, however, that foreign oil is no longer cheap, is not likely to be so in the future and may not even be available. There is general agreement that we must strive toward achieving a reasonable degree of energy self-sufficiency within the shortest possible time. Such a goal necessarily im-

plies that the price of energy must be high enough to make its development possible.

Free market forces ultimately will determine what this level has to be. Free market forces, however, have not been permitted to determine the price of energy in the past and may not be permitted to determine the price of energy in the future. Governmental interference in this price mechanism can be and has been a serious impediment to the development of a sound energy base.

Most qualified neutral observers agree that the governmental restraints on natural gas prices in the 1950's and 1960's constituted one of the principal factors which led to our present shortage of domestic energy resources. For this reason, it is important to look at natural gas pricing as a case history of the kind of mischief that can and will be created by governmental price interference. When the Federal Power Commission was saddled with the responsibility of setting producer prices as a result of the Phillips' decision in 1954, it felt that it must do so under the general pattern of consumer protection contemplated by the Natural Gas Act. Thinking the lowest "reasonable" price must be related to cost—rather than value—it applied a public utility rate methodology which sought to determine the cost of production of gas. Under this methodology, one looks back at a test period and takes into account the various components of cost and rate base in order to derive a regulated price.

The Commission eventually learned that it would be impossible for it to determine individual cost of service for each gas producer in each area of the country. Furthermore, it learned that this type of individual company cost of service determination would result in wildly different prices for different producers even in the same producing field. In an attempt to cope with this problem the Commission then went to area rates where it attempted to determine cost of service on a composite basis for all producers in a given area. This incredibly complex determination was based inevitably on data that was several years old by the time any decision could be reached. The Commission was always looking backwards at cost factors that were several years out of date by the time it could complete its determination and such factors might be a decade out of date by the time the courts could review such determination. Furthermore, any such determination at best could determine only what it had cost to find gas in the past and could not remotely indicate what future price would be required to develop additional gas.

In other words, Mr. President, there would be no question of determining under that formula whether gas could be obtained in the future or be regulated on that basis.

As a result of these inherent disabilities in attempting to determine an appropriate price for gas on a cost or public utility basis, both the Commission and the courts concluded that some other method would have to be followed. So, as a result, the Commission, with the sanction of the courts, has attempted to consider "noncost" factors and to allow prices which would elicit the necessary response. Even with these commendable efforts prices have continued to lag well below replacement costs and well below the value of gas compared with other sources of energy.

The result of 20 years of producer rate regulation is a severe shortage of natural gas and a severe shortage of other domestic energy resources. Specifically, as the price of then abundant gas was held to artificially low levels, an artificially high demand was created for it. Where gas was interchangeable for coal or oil and where it cost only a fraction of the cost of coal or oil, obviously it would supplant these other less desirable and more costly forms of energy. There is no question that low gas prices resulted in low oil prices and low coal prices. Gas took over more and more energy markets and inhibited the development of our oil and coal resources. Depressed oil and oil products, together with reduced levels of domestic production, discouraged the construction of additional domestic refining capacity. The advent of nuclear energy for power generation in truly significant quantities was stunted. Many plants were not built. Now, we are running out of cheap natural gas resources developed in past years. Gas is no longer available for many of the markets it has previously supplied. The development of additional gas resources is inhibited still by the continuing restraints on its price.

No one wants energy to be priced at levels in excess of those required to permit the full development of our known and potential energy resources. No one is in favor of true "windfall" profits, meaning profits that are not necessary to develop an adequate energy base. Our problem is that we have priced energy too low in the past. As a result, we have not kept pace with our normal requirements of energy. Furthermore, by pricing energy so low, we were creating an artificial demand for it. With 6 percent of the world's population we were consuming one-third of its energy.

There was absolutely no incentive for anyone to conserve energy since its cost was trivial in relation to income.

Gas and oil and other energy resources must be priced at levels which will cause the necessary development of our energy resources. Energy must be priced to consumers at its true cost to avoid excessive and profligate use. Price in the final analysis is by far the best allocator of any resource. Pricing energy at its replacement cost has the added advantage of putting the cost of energy in the proper account, namely, that of the user. Permitting all forms of energy to compete among themselves is the best allocator of these different energy sources and will eliminate the irrational results we have achieved by holding the price of natural gas at a level which reflects neither its energy value nor its replacement cost.

There is general agreement the United States still has a very large and adequate energy resource base. We simply have not developed that base in keeping with our essential energy needs. There also is general agreement that the supply of energy is elastic—meaning that it is unusually responsive to the price stimulus. Some estimate that a domestic price for oil of $10 a barrel would result in a relatively short time in a domestic production level as high as 20 million barrels a day. Even if this estimate of increased production levels is only half right, the increased level of oil production plus a concomitant increase in gas production, coal production, and nuclear energy production would more than satisfy our essential energy needs.

In order to avoid short-term windfalls it may be necessary to adopt on a temporary basis proposals of the type recently made by the ad-

ministration so long as there is incorporated in any such proposal a provision for crediting against the tax the reinvestment of additional revenues in domestic energy producing projects. Such a measure should be expressly limited to a 2- or 3-year period during which our domestic resource base is rebuilt.

Similarly, governmental regulation of new gas prices should be phased out over the same period with a proviso that the rates during this interim period should reflect the energy value of gas in relation to other fuels such as oil and should not be set on any historical cost of service basis. Regulation of old gas prices should be continued until contract termination or price redetermination becomes operative.

Price increases will be reflected, of course, in cost to the consumer of energy. Nevertheless, they will still have a relatively small impact on such cost. For example, a $1 per barrel increase in the cost of crude oil translates into an increase of approximately 2 cents per gallon in the cost of gasoline. A 25 cent increase in the producer price of natural gas will result in a relatively modest price increase to a consumer in the Middle Atlantic States since the great part of such cost is the transmission and distribution charges. These price increases can be more than offset by even a modest degree of conservation in the use of energy by the consumer.

In the final analysis, so long as the cost of domestic energy does not exceed the cost of imported oil or liquified natural gas, we have not burdened the consumer with any cost he would not have to pay in any event, and we have benefited our entire economy. We simply cannot afford to become more and more dependent on imported energy.

Such a policy would inevitably lead to a drastic lowering of our living standards. Our economy cannot stand the outpouring of $30 to $40 billion annually for foreign oil when there is no substantial balancing of foreign trade. We are indeed fortunate among the developed countries to have the requisite energy base to avoid such a catastrophe. We are also fortunate in having the most highly developed energy industry in the world to secure this energy base. The only way we could create a long-term catastrophe for this Nation would be to impose governmental decisions at this time which would destroy our ability to develop this adequate domestic energy base.

Rolling the prices back as provided in this conference report [Sec. 110] could prove devastating to the economy of this Nation. The net result will be less energy which will result in longer lines at the service stations with prices rising as a result of passthrough of higher cost for foreign petroleum that it will be necessary to import to replace the cut back domestic production caused by marginal wells being unable to produce at the reduced prices.

Mr. President, I yield the floor.

Mr. WEICKER. Mr. President, I would like, if I can, to express in a few words some of my feelings on this subject prior to the conference report coming to a vote tomorrow afternoon.

I must confess that I am still quite undecided as to how I will vote should we have a motion from the floor to recommit the report. I do not have any difficulty with the work done by the conference and its very able leadership. I do have a great deal of difficulty with the fact that the report provides merely for permissive action on the part of the President relative to rationing. [Sec. 104.]

Let me describe what the situation is today—a situation that is getting worse. And this does not apply only to my State of Connecticut, the States of the Northeast, or the more populous areas of the country. The situation is widespread, and growing.

Basically, we were told when this started that it was a national crisis, and yet the response of both the President and Congress has been not to devise a national solution, but rather to importune the service station operator, the local government, and the State government to respond to the crisis, rather than taking that responsibility on their shoulders.

If we have a national crisis, then indeed it demands a national solution. The situation today is quite simple insofar as the gas station operator is concerned. He is the one who gets the abuse. He is the one who is asked to play the enforcement official. He is the recipient of ill-will on the part of the public. I do not think that is the way it ought to be.

By the same token, because of our failure to act on a national basis, human beings are now behaving like animals. There is no dignity. There is no respect. There is panic. Because of our failure of leadership at the Federal level, the individual citizen has been placed in a situation such that, if he saw it reflected in a mirror, he would be aghast.

I was aghast when, during the course of the State of the Union Message, the President made the statement, "There will be no rationing," whereupon a good majority of Congress stood up and started to applaud.

So it is not only a question of inadequacy of response by the President, but also by Congress. What was there to applaud about? If indeed we have a crisis, is it not best to measure what a proper response should be, rather than come forward with a response rooted in past history?

We, with that statement, both the President and Congress, took away the number one alternative for resolving the crisis.

Why should we define, for instance, rationing in terms of a World War II system? That is what the politicians keep on talking about. They say we cannot have that $500 million front money for the program, that we cannot have the large bureaucracy that rationing would entail.

Mr. President, two things have happened since World War II. We have acquired an expertise in Government where we can apply another type of solution, No. 1; and No. 2, the American public is perfectly capable of being treated in a mature way and of having a full understanding of the problem, rather than being patted on the head, and told, "Even though we have a crisis, don't worry, the solution will be painless," when it will not be.

I repeat, if we have a national crisis we need a national solution. We cannot stop human emotions. We cannot stop the energy crisis at the boundaries of the service station, any more than at the boundaries of a local government or of a State. That is like saying you can stop air pollution at a State boundary. It is impossible. You cannot handle it at the State level or at the local level; and when I say "you," I mean we in Congress and the President. We tend, if there are negative points, to try to let them fall on the other fellow; but the other fellow in this instance happens to be the gasoline retailer and the American public.

I am not afraid of the American people. I think they are far ahead of the politicians when it comes to understanding what needs to be done in this situation. And if you think the situation is bad now watch it grow worse. If we go out to the news ticker, we find that crisis situations have developed in States not just in the Northeast but also in the West, the South, and the Midwest. All this during the period of time when we estimate in the way of a gasoline usage somewhere around a 15 percent shortfall, and at a time in January and February when we are at our lowest period of gasoline usage. Just exactly what do we think will happen when that shortfall goes to 30 percent which will be the case this coming spring and summer? The lines then will be four times as long. So if we have only a small line now, figure out what four times as long this summer will mean in many areas of the country.

The tempers that have flared now will be four or five times worse in the future. The same goes for the violence.

It is up to us here in the Senate and House, and at the White House, to go ahead and lead and not try to sample the fears of the Nation.

There is no easy answer. There is going to have to be discomfort. There is going to have to be sacrifice. Maybe some of us will even lose votes of some of our constituents as a price for our leadership.

I believe that the public today expects honesty insofar as its politicians are concerned, both in telling the public what the situation consists of and in advising the remedy. We started off, as I indicated, with the words "national crisis." I have noticed some weasel words creeping into statements of the administration and in Congress, when they now say it is only restricted to a few localities or to a few States. That does not quite sound like a national crisis. But we do have that crisis. The Senator from Arizona pointed out that we are 6 percent of the world's population and use roughly—and he was on the conservative side—33⅓ percent—my estimate would be 40 percent—of the world's energy.

Well, if we do not have any other figure in hand to convince ourselves that there is a crisis, that one should do it.

Just how long do you think, Mr. President, the United States of America, 6 percent of the world's population, can use 40 percent of the world's energy?

How long is someone in Central Africa, the Middle East, or South America going to have to suffer or die so that an American can be more comfortable?

It will not happen.

So the crisis is real. It is with us to stay.

Anyone who says it will be over in a month or two is lying.

The response by Congress and the President as to mass transit system is inadequate because we will not get them for 5 or 10 years—again, one of the principal solutions which has long been denied because we did not anticipate this crisis.

I have heard the Democratic responses regarding the matter of transportation. Let us make it clear that on both sides of the coin there has been a handful fighting for mass transit, but there has been very little interest on the part of the administration and the Democratic majority in Congress putting an end to the highway trust fund or bringing about additional funds for mass transit systems. So the fault lies with government as a whole at the Federal level.

Solar energy will not come to pass immediately. We have not even started in that direction to the point we should have reached by now. We need time to develop these concepts. It is not a matter of hitching up our belt a notch for a week, for a month, but rather for years. Yet, for some reason, we are giving the impression that this crisis will clear up when the embargo is lifted. It will not. It will get worse. We have also got to know that the sacrifice required is not going to be insignificant. All that has happened now is that leadership in the Federal Government is setting person against person, town against town, State against State. We are being set one against the other—individuals, towns, and States.

That is a solution for a national crisis?

Mr. President, I have got nothing else to say in this regard except for the fact that I know self-sufficiency is a great concept. But self-sufficiency requires self-discipline. That is one hard fact of life. It does not involve gambling on the Arabs' giving up their boycott while, at the same time, we curse the Arabs. It should involve gambling on ourselves, no one else.

Yet, the leadership which is supposed to come from Washington, D.C., engages in exercises which solve nothing but cause a great deal of misery.

I know that the motion comes up tomorrow and I am not particularly enthusiastic about blocking the energy bill any longer than we have to, but I must confess that I am deeply concerned about the permissive grant of authority in this area. We should have some guts in the Senate. The American people are way ahead of us. It takes guts to say yes to rationing. But we are going to have to do it in order to solve this crisis.

I am happy now to yield to the Senator from Washington.

Mr. JACKSON. Mr. President, I want to compliment the able Senator from Connecticut for his very fine statement. I happen to share his view of rationing. The Senator will recall that we had a vote on this, that is, the mandatory rationing question, and we lost by, what? Seven or eight votes?

Mr. WEICKER. Right.

Mr. JACKSON. May I also say that in the conference, we went through this same business and the House, of course, previously, had voted down a mandatory rationing requirement. I think it is only a question of time that we will be forced to rationing simply because there is not enough gasoline to go around. I would point out that even if there is a settlement tomorrow in the Middle East, it will not provide the necessary additional crude supply that will take care of our demands.

As the Senator knows, they were queuing up in New England and all over the United States last summer, before the October conflict. Therefore, even if we assume that they go back to pre-October production levels in the Middle East, it will not change. It is my own personal judgment that the countries over there are not going to increase their production. The reason is, they have learned, by cutting back on production and raising their prices, that they can make more money and will conserve their own petroleum resources. So we are in a very tight situation.

May I suggest this to my good friend. I believe that as a condition precedent to action, and this bill gives the President the rationing au-

thority [Sec. 104] not on a mandatory basis but on a discretionary basis, as a condition precedent to actual rationing. Would it not be wise to extend the authority contained in this bill that is before the Senate as provided for in section 105 to require the station operators to be open at a specific time and close at a specific time, and that the public be fully apprised of what stations are open and what stations are closed?

I wonder what experience my colleagues are encountering—but when I came to work this morning, I had to check with the policeman in the Old Senate Office Building and inquired what gas stations around here were open, and I had a member of my staff out looking for gas. My wife is doing the same thing. I am suggesting, Mr. President, that we are wasting millions of gallons of gasoline every day just sitting in line for gasoline.

My point is that in this bill the President can set the hours of opening and closing. Then he can back it up under the allocation authority with a reserve of gasoline which will insure that the stations that are open will have a sufficient supply to meet the demand. I would suggest this course as a court of final action prior the imposition of rationing. I know of no other way out. [Sec. 105.]

I believe that something must be done without delay. If this situation continues the way it is going now, we are going to have riots. We have already had a number of bad incidents in our large metropolitan areas.

I hope the President would have the authority—by that I mean, of course, Mr. Simon—to work out that kind of scheme. I think it is outrageous that we have areas of surplus and areas of shortage and nothing is really being done about reallocation.

I believe that the public is entitled to know what gas stations are open in their neighborhood or community, what hours, and what hours they are going to close. If we have that kind of arrangement, we will know that all options have been exercised, that every effort of last resort is being utilized to come up with an answer short of rationing.

I just wanted to say to my good friend that it is of critical importance that this bill not go back to the conference again. If it does, we are going to have the wrath of the people of the United States on us. While this bill is not perfect, it does give the tools that are needed here to do the job. I must say that if it goes back to committee, we are going to find ourselves wallowing in a mess in which Congress is going to take the blame, and properly so, for not going forward with at least some of these tools. That is my point. We know what the House will do and will not do.

I just wanted to say to the Senator from Connecticut that I share his view. As he knows, I supported it.

Mr. Weicker. I know how hard the Senator from Washington has worked on this problem, and it has gone back and forth between the Senate and the conference. Certainly, his efforts speak for themselves. They have been without equal. But I want to make a couple of points.

No. 1, I realize the difficulties I would have. As the Senator has indicated, we did turn down rationing about 2½ months ago when we were debating the bill itself. So probably I would be subject to a point of order, which would rule me out of order, if I made a motion to recommit with instructions.

Mr. Jackson. I do not think so. I think it would be in order.

Mr. WEICKER. I say this to the Senator: If that is the case—if it is not recommitted—then I still feel that we in the Senate should immediately move on a separate bill dealing with rationing, and I will tell the Senator why. I do not think it is fair to excuse ourselves by saying we have given the power to the President. If I am ready to come down on his head on this issue, I am also willing to come down on ours. If he does not move and the crisis accelerates, the finger can be pointed at him. But as far as I am concerned, this is a shared responsibility. The Senate is also responsible, and we should say that we are willing to go ahead and ration.

We talk about riots and the service station operators, a portion of whom are going to go on strike probably in the middle of this week in my State. But the fault does not belong there. The fault is ours. Even the situation that the distinguished Senator from Washington has mentioned is merely a distribution system. It does not conserve fuel. A rationing system is going to cause a little discomfort for everybody, but I believe it is much better than riots and the animalistic behavior going on in this country now.

What about a system whereby each one of us designates 1 day a week when the car can stay in the garage. Such a system is conservation.

Let us assume that the Arab embargo stays on. We are going to have no more fuel oil produced and available to us this year than last year. It is not there. It is the same amount, except that we know that usage will soar.

Mr. JACKSON. If the Senator wishes to introduce a bill, or plans to, I assure him that we will have early hearings on rationing. I want to assure him on that, because we are going to have oversight hearings on this matter. It is clear to me that we cannot go on the way we are going now. This is anarchy.

Mr. WEICKER. It is anarchy.

Mr. JACKSON. It is getting worse. We do have some safeguards in here so far as the operators are concerned. We have the safeguards that affect the franchise dealers, both branded and nonbranded, and those franchises cannot be terminated without cause. **[Sec. 111.]** Many of those people are being terminated, period, just put out of business.

Mr. WEICKER. Does the Senator from Washington know that in Connecticut, for example, the independents, I gather, are possibly considering forming a consortium to buy some spot gasoline from Canada? And if that happens, such gasoline will be selling at 75 cents a gallon.

I recall the initial debate on the floor of the Senate. We were debating whether or not we should put a tax on gasoline, and we all agreed that it would be unfair to the poor. What we have done is to permit this matter to get so far out of hand that it is indeed unfair to the poor, and this time I define poor not by a few people at the lower end of the spectrum but by defining who the rich are, and only they will be able to afford gasoline.

Mr. JACKSON. As the Senator knows, we provide for a rollback on the price of petroleum in a sensible way. We provide for incentives but say that it cannot go above $7.09.

Speaking of the poor, I was in the Tennessee Valley Friday evening. One of the typical letters that was received was from a couple

drawing $160 a month in social security. The previous month, their propane bill—this was in the wintertime—was $30 a month. The next month, it was $100 a month. The cost of propane has gone through the roof. This hits all the little people—the people living out in the country, away from the gas pipelines. They are being clobbered.

I add that to the additional point the able Senator has made of perhaps a spot price market being utilized for Canadian gasoline. I would be surprised if it would not go higher than 75 cents a gallon.

Mr. FANNIN. Mr. President, will the Senator yield?

Mr. WEICKER. I yield.

Mr. FANNIN. Mr. President, I commend the distinguished Senator from Connecticut for bringing out the important part involved in whether or not we are going to be successful in achieving legislation. Here we have an all-encompassing bill with so many controversial provisions that it has not passed. We would have passed a bill such as he has suggested in November, if it had been a simple bill.

The Senator speaks of the price of fuel and about the use of Canadian fuel. If we pass this bill, we are going to see a much larger amount of that Canadian fuel, or fuel from across the water, coming into this country, and the price is going to be higher.

Naturally, we cannot roll back the price of foreign fuel, but if we are going to roll back the price of domestic fuel, there will be less domestic fuel.

I have talked to a number of small independents who have stripper wells, and they are successfully bringing those stripper wells up to capacity.

We have discussed this many times, but let us look at it from the standpoint of the 350,000 stripper wells in the country.

In Texas alone there are 84,000 that produce about 3.8 barrels a day, but in the 3.8-barrels-a-day wells there is 1.8 billion barrels of oil that is available to be pumped out. But here is the catch. If this bill is passed it rolls back the price. **[Sec. 110.]** There is no insurance that the $7.09 is high enough for the stripper well to operate. I have talked to men operating these wells and they say that at a price around $8 most of them can go ahead in that area. Some need a higher price. The situation requires flexibility.

They say they can double their production in 6 months. Twelve and a half percent of our oil comes from stripper wells so if we double that and produce 25 percent from stripper wells they will make a significant contribution. This bill would kill that opportunity.

I think the Senator from Connecticut is on the right track on what should be done, and that is to pass legislation which is needed. Then we can discuss the other bills, some of which are in the House and some of which are in the Senate, to take care of this great need that we have. But if we go forward with this bill we are in deep trouble.

Mr. JACKSON. I wish to say a word about the stripper bill. I wrote it and I thought it was something that would be useful. We debated it on the floor of the Senate in connection with the Alaska pipeline bill and finally we had it put into the mandatory allocation bill. Oil was then at $3.90 a barrel. The debate on the floor centered on the fact that it would go up a dollar or maybe $1.50; that would be the maximum. I will put all of that information in the Record tomor-

row. What happened? It went from a $3.90 to as high as $10.35 a barrel. That is what we are talking about.

So that my colleagues can understand, let me say that under the existing regulations there is a stripper loophole in the bill. It is as big as an oil well. Let me tell the Senators what it is. All they have to do in a given oilfield that is already functioning is to put a well down alongside the one that is already in the oilfield, where they are taking out oil. They can take out new oil which is really old oil and it is unregulated.

Mr. FANNIN. Mr. President, if the Senator will yield, the Senator knows that is not the stripper well. The Senator is talking about 29 percent and I am talking about 25 percent. I am fighting to hold the stripper wells.

Mr. JACKSON. Very well. Let us explain it to the Senate.

Mr. FANNIN. Let us be factual.

Mr. JACKSON. You are talking about a stripper well?

Mr. FANNIN. The Senator is talking about the new oil wells or other wells that bring the total up to 29 percent. I am talking about 12½ percent going up to 25 percent.

Mr. JACKSON. The impression the industry is trying to give is that by taking the lid off they are going to open up new oilfields. I am saying you can run a well on a property adjacent to a stripper well and take oil out of that area which is part of the same oil pool and it is deregulated. This is a big, big loophole.

Mr. HANSEN. Mr. President, will the Senator yield for a question?

Mr. JACKSON. It means in a well area—that is, where there is a pool—if you want to take it out faster under present regulations you run another well and for every new barrel of oil you are taking out of the same pool that is deregulated you deregulate another barrel alongside of it that is under the lid.

That is a fact and if anyone wants to dispute it we have checked it out.

Mr. HANSEN. I would like to.

Mr. JACKSON. The Senator from Connecticut has the floor.

Mr. WEICKER. Mr. President, I would like to yield but I do wish to make one statement. I want to repeat that for 25 years Congress, aided and abetted by Democratic and Republican Presidents, invested about 95 percent of our transportation moneys in highways and in the automobile. We are the ones responsible for hooking the American public on that as the form of transportation.

Now ingredients basic to that form of transportation are denied us. We stand here and talk about a variety of issues. One is giving leadership, in a temporary sense, so that everybody will be treated fairly; and that can be done only by a national system of rationing.

Second, long-range steps in exploration and making certain that the oil companies are dealing fairly with the American public. At least. I think we owe that type of responsbility and action to the American people.

Mr. GRAVEL. I suppose that in this legislation there are some short-run measures that do achieve this operation equitably among the American people. But suppose in the bill there is also the seed of not solving the long-term energy crisis, and also going in the oppo-

site direction by creating more scarcity. What does the Senator say about that?

Mr. WEICKER. I have made myself clear as to the steps that should be taken. Let us be candid. We are not going to take the inadequacies that have developed over 25 years and resolve them in one bill.

Mr. GRAVEL. What is the main point? It is increasing production, is it not? Capital is needed. Does it not take dollars to do what is needed to be done?

Mr. WEICKER. There is no question about it.

Mr. GRAVEL. Where will the dollars come from, in the short or the long term, to build a refinery, to build pipelines, to drill for oil and gas, to liquefy gas? Where will the capital come from?

Mr. WEICKER. Principally from the private market.

Mr. GRAVEL. So if the price is frozen at an unreasonable point, or if the price is rolled back, it will not be possible to get the capital.

Mr. WEICKER. That is very possible. I remember the amendment offered by the Senator from New York (Mr. Buckley). He offered an amendment which would have kept the price steady on old gas, but would have lifted it on new gas, so that the production of new gas would have been encouraged. It was defeated. So what we were telling the American people was that they were going to get more gas at no cost.

Mr. GRAVEL. Does not the Senator agree that there is demagoguery, that it is a shame? It is not possible to get something for nothing.

Mr. WEICKER. There is no question about that.

Mr. GRAVEL. So where are we going to get the capital?

Mr. WEICKER. From the private market.

Mr. GRAVEL. How can we stand here and say that we are being responsible to the American people if we recognize—as I recognize—that the problem of getting capital is more serious in Connecticut than it is in Alaska? I just came from Connecticut this morning.

Mr. WEICKER. How did the Senator get here?

Mr. GRAVEL. We recognize that the only solution is to tell the American people that we are going to get it from the gasoline.

Mr. WEICKER. The Senator from Connecticut has already expressed his reservation as to no mandatory rationing. There is a problem of getting gasoline through the short term, which relates to rationing. However, for the long term, it relates to explorative mass transit, solar energy, and so forth.

Mr. GRAVEL. But the Senator has to vote on the totality of it. So if he is voting for this bill, he is voting for cutting back on money.

Mr. WEICKER. The Senator from Alaska can describe his vote; I will speak for mine. I would only say that what we are looking for, is that everybody be treated fairly. Under the present system, when we leave enforcement, when we leave the solution, to the gasoline retailers and the State governments, such cannot happen. The panic, the crisis, is going to go ahead and get worse.

Insofar as the long-range policies, are concerned, those that have been alluded to by the distinguished Senator from Arizona and the distinguished Senator from Wyoming, about the need to encourage exploration, about mass transit being made available, about solar energy being made available, the fact is that none of these are available to the American people, and they will not be available to the American people for some time. The first relief might come in 6 months to 1 year, but most of the things we are talking about here are a matter of 1 or 2

years, and I do not think the people of this country want to live like animals for that long.

So I would hope, regardless of the long-range policies—the Senator from Washington, upon the adoption of this conference report, should hold hearings on rationing. We should not say, "We gave the power to the President, but he did not use it." We all ought to stand up and be counted on that issue.

I yield to the Senator from Wyoming.

Mr. HANSEN. I thank my distinguished colleague from Connecticut very much.

I thought that the distinguished Senator from Washington was saying that today, with the situation as it is—and I quote from a press release that was issued today, Monday, February 18, wherein the Senator is quoted as saying—"Unregulated prices are encouraging drilling for loopholes rather than oil."

The Senator went on, just a few moments ago, to suggest that with the regulations as they are now, or with the lack of regulations, it is possible for a person to drill a new well alongside a stripper well and to produce new oil that would be unregulated.

Am I quoting the Senator correctly?

Mr. JACKSON. The Senator is very correct.

Mr. HANSEN. Very well. The facts are these: If I am not mistaken, it was the distinguished Senator from Oklahoma (Mr. Bartlett), the present occupant of the chair, who proposed the stripper well amendment, and I do not recall any great enthusiasm among some of the members of the Committee on Interior and Insular Affairs at that time to exempt stripper well oil, but because I like to believe reason prevailed, we were able to attach the stripper well amendment to the Alaska pipeline bill and it became law.

What does that law say? The law says that stripper wells are identified as those wells producing not more than 10 barrels of oil per day based upon a field or a leasing unit, and if the average production in that leasing unit is not in excess of 10 barrels of oil per day, based upon what was produced the previous year, the Senator from Alaska was implying in his question, that is stripper well oil.

It would be absolutely inane for any oilman to drill a new well alongside a stripper well to get exempted oil. It is already exempted.

So I repeat to the distinguished chairman of the Interior and Insular Affairs Committee, what he said is not true. It is not true because stripper well oil is oil coming from a leased field that, on a previous year's production, was producing under 10 barrels a day.

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. HANSEN. I would like to make this statement first. Then I will be happy to yield for a question.

I will say this: The only way a person would have any interest at all in drilling a well today alongside a qualified stripper well would be to anticipate a continuance of the present regulations for 1 more year. and then to be hooked with the increased production which I assume impliedly goes above 10 barrels of oil a day for the entire leased field. If that were the case, that would be the only reason on earth anybody would be willing to drill a new well alongside a stripper well.

Now I yield to the Senator from Washington.

Mr. JACKSON. Is it not a fact that under the regulations, exclusive of the stripper provision, a new well can be drilled, because it is not a stripper well, taking oil out of that oil pool, and it becomes unregulated oil? That is the interpretation we have received.

I would point out further that when there is a large pool that covers a vast area, the same thing applies.

Stripper wells are defined in the legislation as those having production of 10 barrels or less under that lease, but those are existing wells. Drill a new well and it is no longer a stripper well, and it is exempt under the regulations.

We have checked this out. This is what the answer is. I just point it out to my good friend.

I would say the real problem in opening up new fields relates to manpower, pipe, rigging, drilling equipment, and so on. This is the drawback to getting new oil reserves. That is what we are talking about. I want an incentive to getting new oil reserves.

The Senator from Wyoming is correct that there is no incentive to drill a well beside an existing stripper well just to get a decontrolled price for old oil, because oil from stripper wells is already decontrolled. My point is that there is a special incentive to drill new wells on properties adjacent to existing wells producing controlled oil, but draining the same reservoir. Not only does this loophole let the operator charge almost twice the controlled price on the oil he produces from the new well, but he gets to increase the price on an equal quantity of old oil from his other properties. At a controlled price of $5.25 and the current uncontrolled price of $10.35, that means the producer gets an additional profit of $10.20 for every barrel that comes up the new well, even if most of that oil would have been produced from the previously existing wells.

Suppose that the new and released oil loophole, by virtue of drilling new wells in old reservoirs, does actually increase production by 10 percent. Does the Senator from Wyoming realize that consumers are paying more than $100 per barrel—or $2.10 per gallon—for that increase in production?

By this loophole we have created a powerful incentive, indeed, to drill wells, but mainly on known structures, an incentive much more powerful than the incentive to take the risks of exploratory drilling on wildcat acreage, the only kind of drilling that will increase our ultimate producing capacity.

What I am talking about is drawing down of oil out of an existing field and doing it in a way in which there is developed, technically, a new field and that oil is drawn out and it is exempt.

Mr. HANSEN. What I must say to my friend from Washington I think has been illustrated by him. He does not deny my allegation that it would be wrong to say that there would be an incentive now to drill a new well alongside a stripper well to get that oil out of that, because in that leased unit all that oil is exempt. It is a little bit of double talk to imply that the regulations as they are presently enforced would give any incentive to anybody to drill a new well alongside a stripper well. That oil is already exempt.

Mr. JACKSON. It is not exempt.

Mr. HANSEN. It is exempt.

Mr. JACKSON. Ten barrels and less.

Mr. HANSEN. Exactly right.

Mr. JACKSON. But all over that——

Mr. HANSEN. No. Read the regulations. If the Senator is going to talk about what is going to happen——

Mr. JACKSON. New oil is exempt.

Mr. HANSEN. I would be happy to yield to the Senator.

Mr. JACKSON. Would the Senator say that if a new well were drilled to take oil out of an existing field, that is new oil, or is that old oil? I ask that question of the Senator.

Mr. HANSEN. I would say that any time anyone drilled a new well he could argue it is new oil.

Mr. JACKSON. He could argue, but what is it under the regulations? We have checked it out. It is exempt from price control, and it has been going as high as $10.35.

Mr. HANSEN. The point the Senator from Washington very conveniently fails to recognize or admit is that this oil is already exempt. He does not deny. He does not deny because he cannot deny. He knows it is not true. He knows it is not true that with stripper wells there is any incentive to go in and drill alongside a stripper well to get oil out of a new well. The Senator from Alaska has said this repeatedly. He chaired a number of hearings in the Energy Subcommittee, and he did a great job. I would also say we had better listen to what he is saying, because he happens to make good sense.

Mr. GRAVEL. Mr. President, will the Senator yield?

Mr. HANSEN. I was hoping the Senator would wish to make a comment on that.

Mr. GRAVEL. I would like to make what I hope will be good sense on the point the Senator from Washington addresses himself to. That is the point that we are faced with a problem of getting rigs, pipe, steel, et cetera. I would like the Senator to explain to me and to the American people, if we have $10 world oil prices and $5 American oil prices, how anybody in this country will be able to compete to buy steel or to buy anything they need to drill for oil, and compete with the rest of the world. And if we cannot compete, are we talking about an embargo on steel pipe or on the technology, or an embargo on the cybernetics, so that we can address ourselves to a problem which involves uneconomical waste because we have created fortress America by the embargo. How can we get steel, rigs, and all of the other things we need if we cannot compete with the other countries.

Mr. JACKSON. Mr. President, I would be happy to make a brief statement at this point in response to the Senator from Alaska.

We have been checking with the oil analysts on Wall Street and elsewhere.

Respected oil analysts on Wall Street and elsewhere say that these price levels will not buy increased supply. We can get the oil. That is what is being missed here. We are talking about whether or not there is an opportunity to have new reserves. The real constraint on supply is not price. At $5.25 a barrel, there is plenty of incentive. I am talking about figures from the Petroleum Council. I am taking the figures of the Independent Petroleum Association. We have done a brief survey of industry price studies which shows that as late as December of 1973, their own target price for incentive was, I think, $4.50 a barrel.

Under this bill it is 32 percent higher than the price of $5.25 a barrel. This is 32 percent higher than the price of less than a year ago. The constraints today are shortages: shortages of trained

manpower, pipe, drilling rigs, and practically every other material a high technology industry needs.

In fact, the unregulated and artificially high price of domestic crude oil is counterproductive. It is retarding exploration for and development of new oil discoveries. Instead of encouraging the development of new "wildcat" acreage, the present price structure does the opposite. It encourages the drilling of new wells on old reservoirs that are already in production.

These new wells divert scarce drilling rigs, pipe, other equipment and manpower away from new exploration for the sole purpose of taking advantage of major loopholes in the price system. These loopholes enable unscrupulous producers to double the value of their "old" oil—their presently producing fields—by simply drilling and pumping the oil through a new well.

Pursuit of this loophole enriches owners of producing fields. It does not produce more oil. It does waste precious materials already in short supply. It can damage the ultimate recovery from these reservoirs. It does penalize the honest operator who is trying to bring in real new production. It does force consumer prices up and up. It does not produce any public benefit in the form of increased supply. It does impose unreasonable burdens on the American people.

Mr. HANSEN. I think that one of the problems we have today in trying to research a rational decision as to what should be done results from the fact that we have been barraging the American people with a great number of statements that are sheer demagoguery.

One of the reasons why the average citizen of today is so upset and so frustrated and so persuaded at times to engage in fist fights and in other actions of seeming violence is that he has been told day after day after day that all oilmen are alike, that all oilmen are wealthy, that they have tax loopholes that are unconscionable, that they have windfall profits. These things are simply not true.

Mr. President, the fact is essentially that oil production in foreign countries has become very profitable and has produced a windfall profit not because of contrivance on the part of the American industry to withhold supplies, but simply because most of the oil in the world today happens to come from the Arab countries or the non-Israel oriented countries. And by that, of course, I include the country of Iran.

The Senator from Oklahoma (Mr. Bartlett), the Senator from Arizona (Mr. Fannin), and I have been over there, as have many other Senators.

The reason the Arabs have been boycotting those nations in the free world that have evidenced an attitude toward helping Israel is simply that they do not like what we are doing over there. They have said that as long as we continue to make funds available to Israel and as long as we continue to supply them with the munitions of war, with planes, rockets, and everything else, they are going to use everything at their command to retaliate against us.

I do not want to get into an argument as to what our foreign policy should be. For a long time it has been my opinion that we ought not—this Nation, the United States of America—to get ourselves into a position where we can be dictated to by any foreign country.

I have heard people remark about conditions a few years ago and about some of the commissions. And we have had plenty of them, believe me. Some of these commissions were talking about how silly it was to operate stripper wells in America.

They said, "Why don't you go about this in another way and buy the oil where it is cheap?" I did not hear anyone at that time talking about the tax advantages that we have given to multinational oil companies operating in the Middle East. There was not anyone saying then that they are getting wealthy.

Why was that not said? It was not said because the oil was not bringing very much at that time. The people were saying then, "You can buy it over there." A lot of the people in the United States were saying that we should buy it over there for one-third of what it would cost over here. They were saying that we should buy it over there and save the American consumers at least $5 billion a year.

That is what the commission recommended. And they said in addition that we could do even better and put a tax, an import tariff on this oil as it comes in. We would then not only save the American consumers a lot of money, but we would also be able to replenish the depleted Federal Treasury at the same time.

What happened, Mr. President, is that the Arabs thought we were getting a little too friendly with the Israelis. They cautioned us, as the distinguished Senator from South Dakota knows, because he was over there. They cautioned us and told us that we should take a more even-handed position in the Middle East.

They told us that they would shut off the oil. We said that we would not be blackmailed. And I say that we should not be blackmailed. However, there is only one way that we should have acted, and that is to reduce our dependence upon any foreign source of supplies.

My friends used to say that we can always count on Canada because we are just like sister countries. We have also said—some of us have, although I have not—that Canada is the 51st State. And they refer to us as the 17th Province, or whatever the number may be. There is great rapport between these two countries; I recognize that. But what has happened?

You know, for a long time the Canadians had the best of all worlds. Most of their oil and gas production, as we all know, occurs in the western part of Canada, and they had a great market in the United States. They could ship their oil down here, and for a while we had quotas on what they could bring in; in order to give some degree of stability to the domestic oil produced, we imposed some quotas. We had the mandatory oil import program.

Then that was phased out a couple of years ago, as our domestic supply failed to measure up to our needs. That is another story, and I shall not go into it now, but I simply say this, Mr. President: Canada was selling oil and gas to the United States which came from western Canada, and it was importing oil for eastern Canada, where most of the people live, at a far lower unit price than what it got for the western Canadian produced oil and gas. So they had the best of all worlds. You could not make money any better than that.

But what happened? When the Arabs started closing the valves a little bit, and as consumption worldwide increased to the point where

we did not have enough production worldwide to meet all of the demand, under the laws of supply and demand—and I suggest that despite intentions to the contrary, the United States will not repeal those laws of supply and demand—we found that there was not quite as much to go around as there had been. So Canada has increased the tax on its oil, and right today what does Canada receive at the borders for oil? I think about $10.40 a barrel. They were not about to keep sending oil down to the lower 48 for far less than it was costing them to bring the oil in from the Middle East. And we were suckers. We were foolish. We were extremely naive ever to have believed that they would have done anything else. Of course they did what their best national interests would dictate, and I suggest that any other country is going to do the same thing.

Without getting into the merits of the contests between armies in the Middle East, let me say that we can depend on it that the Arab countries and the non-Arab countries alike which oppose our Middle Eastern policy are going to continue to use oil as a weapon. And what does that have to do with this debate? It has this to do with the debate: Senator Jackson and a majority of the conferees on the energy conference bill, both the House and the Senate conferees—I think there were only three of us who voted "nay" on that conference report, and I have forgotten how many signed it, but everyone else did, as I recall—are trying to say to the American public today, "We are going to solve your energy problem. You do not like waiting in line; you do not like being unable to find any gasoline. We'll fix that up. We'll ration it. And we'll go you one better than that: We will not only say that you do not have to put up with these inconveniences that you abhor and inveigh against, we'll roll the price back. You are sure going to have the best of all possible worlds."

And I guess if I were running for the Presidency of the United States, I might say the same thing. But, Mr. President, I want to say this: I do not believe we are really going to fool the American people, in the long run. Because it will not take very long, if this bill passes and we institute rationing, for the average American motorist to find out that it is one thing for the Congress of the United States to say, "By law you will have your filling station opened certain days of the week, certain hours of the day"; but if there is no oil in the tank, it really will not do you much good to open up your filling station. They can say, "We are open for business," but they cannot get another drop out of the gas hose.

That is exactly why I think that the American people need to understand a few basic facts of life. The first is that if we want more oil produced in this country, we have got to make it profitable for those people with money, just as the Senator from Alaska was saying, to invest in oil.

What has happened? Since 1957, comparing 1957 with 1972, a period of 15 years, about half of all of the people in the oil business in the United States—half of all of the independents, and that is more than 20,000—have gone out of business. And why did they go out of business? For one very simple, basic, elemental business reason: There were better ways of making money.

We changed the tax laws. We have done all sorts of things. We had encouraged overseas production, because at the time most of the people

in the Congress of the United States—and I say specifically most of the representatives from the Eastern States—were all for that, because they could see cheap oil coming in, and they thought it was great. They did not oppose it; they were leading the pack, saying "Let's do this."

Now, of course, we have found out, though it takes a long time for some of these facts to digest, that it has not worked out as well as we thought it would, and over half of the independents, roughly, have gone out of business. In 1972, we drilled only half as many wells as we drilled in 1957. And yet, the authors of this bill, the proponents of this rollback legislation, are trying to say to the American public, "We will not only ration gasoline, so that you will not have to wait in line, so that you can be sure of getting your fair share; maybe it will be 1 day a week you can buy it, or 1 day a week you cannot buy it"—there are 10,000 ideas on rationing gasoline, and they have all the answers—they are saying to the American people today, "Let us roll the price back, so that the poor people can buy gas."

You know, India has had famines for thousands of years. The story is told about one of the early emperors experiencing the pangs of hunger among his people that inevitably accompany a famine, who said, "We are going to control the price of grain in India, so that the poor people can get it."

What happened? That was probably the first black market, so far as I know, in the world, and a lot of people starved to death because they found out, in India, many thousands of years ago, that by pegging the price, a black market immediately sprung up, and the people who needed the grain were not able to buy it.

I know that in a short supply situation there is no way to make everyone happy, and I do not think it becomes a Member of the Congress of the United States to try to think for one moment that we are going to make everybody happy about this situation, because we simply are not going to.

But let us not make matters worse. Later on, another emperor of India, confronted with the same situation, said, "Here is what we are going to do. We will publicize throughout all of India what grain is selling for, and we know, on the basis of past history, that those areas which are in critically short supply are going to find that the prices rise, so we will let people throughout the whole nation know that if they have surplus grain, they can get more by shipping it from there over to here and as they do that through the mechanism of a free market the best solution of a short supply will result." It worked out, just as the second emperor noted that it would. While there were hungry people and while prices did rise, there was not the starvation the second time around that there was the first time around.

The reason I tell this story, Mr. President, is that it seems elementary to me that all of us should recognize what the facts are. We are dependent upon foreign countries for more than one-third of the oil we use in the United States today. That is the highest priced oil we buy.

What are we doing?

We are saying, let us solve this problem. We cannot, by the passage of laws in Congress, tell the Arabs, the Canadians, and the Venezuelans, or the Indo-Chinese what they will get for their oil. We know that we are going to have to pay whatever they ask us to pay if someone else is willing to pay about as much.

So, what are we doing?

We are saying, let us roll the prices back. Let us treat this poor man in America—and we have a number of them, I do not minimize at all the problems of inflation—but I say this, that the most important thing America has going for it today is its standard of living, its productive capacity, and the fact that so many of us are at work.

Now if we really want to bring about unemployment, and this bill talks about unemployment, we can do that very easily. All we have to do is to shut off the supply of oil and gas.

Why will that bring about unemployment?

It will bring about unemployment because 78 percent or 79 percent of all the energy we consume in the United States today comes from oil and gas. If we roll the prices back, as this bill would have us do—Senator Jackson said that if the price of new oil—$10.30—$10.40—I have forgotten the precise figure—is rolled back to $5.25—and I admit this does make the provision that if the President wants to go through the Administrative Procedure Act—he can, in addition to the requirement that he comply with the Administrative Procedure Act, and by submitting substantial evidence as well, authorize the price to be raised another 35 percent, and that would be the top price, then, at $7.09 a barrel.

Mr. President, what would this do?

All we are talking about is the price of domestic oil. We are saying that we will take care of America by lowering the price of that oil.

Now, if Senators will look at the Congressional Record for February 7, 1974, beginning at the top of page S1579 and continuing all the way through the bottom of the first column on page S1592, I think they would agree with me that there is evidence in that portion of the Record to point out the lack of economic reality in some of the statements made on this floor. It has been said that the price of $7 a barrel is more than adequate, that even $5.25 is more than adequate, to assure all the domestic production we need.

Mr. President, that is poppycock to make such a statement, because I have included in here the testimony from some of the most reputable people we can find, including a very eminent member of the staff of Harvard College who says that that is not so, that it does not work that way.

Of course, if we stop to think about it, we can easily understand why it is that if we control prices—and there has been a great stimulation given the oil business recently, I grant that, and the stimulation has come from the increased price of oil and gas. That is what has got the oil people out working. It has caused a lot of the old stripper wells to be opened up and brought back into production. That is just one reason—just one reason, Mr. President. There are not many people in the oil business, in the cow business, in the lumber business, or any other business that I know of who are willing for very long to operate just because they are altruistically inclined.

Most of them, sooner or later, have to pay the note at the bank, they have to meet the payroll, and they have to pay their taxes. If they do not make some money, they are not going to be in business very long. Despite their good intentions and despite all of their desire to help America, the fact remains that, for most of them, they have got to make some money or they cannot stay in business.

That is precisely why the distinguished Senator from Oklahoma (Mr. Bartlett) proposed the stripper well amendment. He knows what he is talking about. Senator Fannin of Arizona also spoke about the amount of oil that is being recovered today from stripper wells. Senator Bartlett said that if we want to get into production, take the price controls off the stripper wells. That is what is done. It is simply not true to say that there is any economic reason at all why a person would go into a stripper well field today and drill for a new oil well alongside a stripper well, to tap that well because that oil would be exempt, when the fact is it is already exempt. We all know that. The only test that is made of this is on the previous year's production.

But now to get back to what the price rollback would be, I will admit it has great appeal. It has great appeal because the American people have been bombarded with the phony arguments that everyone in the oil business is a millionaire, that they have earned unconscionable profits, when the facts are that the biggest bulge in profits today in the oil business has come not from domestic production but rather from foreign production. It has come from foreign production not because of contrivance on the part of the oil industry but because the Arab-banded, non-Israeli-oriented countries have gotten together and said, "We are going to do something about that price. We are going to have a boycott." I would say simply——

Mr. GRAVEL. The profits of the integrated oil companies have come from sales abroad and not from profits abroad.

I repeat, from sales abroad. No oil in Saudi Arabia is transported to the United States of America, but oil from Saudi Arabia is transported either to Europe or Japan. So those profits created have helped our balance of payments. I would just like to underscore that.

Mr. ABOUREZK. Is the oil that is sold by the multinational oil companies to Europe and Japan subject to the foreign tax credits we provide here in this country?

Mr. HANSEN. As nearly as I know, in response to the question of the distinguished Senator from South Dakota, any tax paid, any royalty—I do not say for a moment that we should not reexamine our tax laws, that is precisely, of course, what the Senator from Alaska (Mr. Gravel) has been doing——

Mr. GRAVEL. If the Senator will yield there, we held extensive hearings on that subject, and I might say, in response to my colleague's question about the foreign tax credits, that, yes, the oil companies have foreign tax credits, and they have had them for some time.

Mr. ABOUREZK. That is, when we say profits, does not the majority of the profits that come from Middle East oil to any other country—does not the majority come from foreign tax credits?

Mr. GRAVEL. No. The integrated oil companies on an international basis are paying the taxes wherever they are operating, and that tax, when it is fully accounted, amounts to about 60 percent. If they do not pay the taxes to us, they pay it to Saudi Arabia or to other countries. That is as it should be. If we do not give them an investment tax credit, they will suffer double taxation. It will put them in an uneconomic position with other nations in the world.

Mr. ABOUREZK. That is why I am asking. I am not sure about this. Is not the amount of the royalty they pay credited as a foreign tax credit and subtracted from the tax bill in this country?

Mr. GRAVEL. No question. In fact, you could increase that tax bill if you considered it as royalty. All you would be doing would be taking more money from the oil companies operating abroad, money which helps our balance of payments.

Mr. ABOUREZK. And that gives them an additional profit.

Mr. GRAVEL. No question.

If we take the example of Exxon, they had a 16-percent increase in profit for domestic sales in this country, not the high figure we have heard of 69 percent. They had an 83-percent growth abroad. That is why we have over a billion dollar net balance of payments this year, which helps the farmers in the Senator's State and the rest of the people in this country. We can't throw that away.

My colleague is right. If we take away the investment tax credit from the oil companies, we have to do it to the motion picture industry, and we have to do it to all other industries. When we do that, we make America uneconomic in the world, and then we really will have a problem with our balance of payments.

The rollback in this bill [Sec. 110] would guarantee that we would have to buy abroad. Why would a person take a million dollars and invest and drill for oil in the United States, where he can sell it for $5, when he can go to Venezuela, Canada, and Saudi Arabia and find oil and sell it for $10? We are going to force capital to go abroad, and we will have scarcity in this country.

Mr. ABOUREZK. What is being posed is a choice between paying highway robbery prices for oil or not having any oil at all, apparently.

Mr. GRAVEL. That is the choice, because we gave the highway robbers the guns and we left ourselves naked. If we want to control inflation and the price of oil the way to do it is by supply. You cannot legislate against the laws of economics, just as you cannot legislate against the law of gravity. If you want oil, increase supply. If you have the supply, then you can depress the price. If you want to create scarcity, you keep the price low, so that nobody would provide oil. Then you will have continued scarcity; and we can pass a law which will provide rationing not just for this year but for the next 20 years as well.

Mr. ABOUREZK. If we want the law of economics to apply to the oil industry, perhaps we ought not allow a monopoly to exist that does exist.

Mr. GRAVEL. That is an interesting charge. Let us compare that monopoly. Does the Senator feel that there is a monopoly in automobiles in this country?

Mr. ABOUREZK. Yes.

Mr. GRAVEL. Why do we not do something about it?

Mr. ABOUREZK. I wish we would.

Mr. GRAVEL. Three percent of the automobile manufacturers control the entire automobile industry.

Mr. ABOUREZK. Three automobile manufacturers.

Mr. GRAVEL. Ninety-seven percent is controlled by three manufacturers. In oil, it is only 59 percent. Not many industries in this country are as competitive as the oil industry.

What we are going to succeed in doing with the policy we are developing here is to make sure that, like every other part of American industry that the government has fiddled with, the little guy will be driven out.

Mr. HANSEN. Mr. President, I have a few concluding remarks to make, and then I would like to yield to the distinguished Senator from Oklahoma. I have two further statements in mind that I think need to be underscored and clearly understood by all of us before we vote on this matter tomorrow afternoon.

What has transpired already underscores the good wisdom displayed by the Senator from Arizona when he objected to a motion that had been proposed by the Senator from Rhode Island (Mr. Pastore) just before the recess, when the Senator from Rhode Island wanted to move to recommit at that time. Senator Fannin pointed out that this is a very complicated bill. It contains approximately 40 sections, with a great deal of new material. We have things in this conference report that were not in either the Senate bill or the House bill.

It is not difficult these days, with long lines of people queued up before gas stations, with the frustration that accompanies a short supply situation at any time, to demagog an issue and have a lot of people think—who do not take enough time to think—about a simple answer. But we must not, in the Senate or in the House of Representatives, make the fatal error of acting on this kind of emotionally charged situation; because if we do, we are going to get out of the frying pan and smack dab into the fire.

If we think the situation is bad now, let us consider for a moment what would happen if we were to roll these prices back. I have pointed out that a stripper well is a well with 10 or fewer barrels per day average production, based upon the previous years record. There is no reason at all to think that anybody with enough money to drill a well would drill a well along side a stripper well to have exempt oil, because it is already exempt.

Mr. BARTLETT. On that point, the distinguished chairman made the statement that there is a big loophole in the stripper well amendment, that an operator would have an incentive to drill a well right next to an already exempt stripper well, that he has checked this out, and that this is correct. However, I do not think he has checked it out with a stripper well operator or with an independent.

In drilling a well next to any well, the best that the operator could hope to achieve, if it is a producing well, would be to have that well produce about half of what the other well produces. The two wells together, with twice the investment and twice the lifting cost, would lift the same amount of oil. So the well is not going to be drilled unless it is drilled to some other horizon or unless the stripper well for some reason is impaired.

What is an operator going to do? If an operator thinks that this well will produce more oil because the sand has become plugged off by basic sediment out of the oil or that some gypping is going on or that there is something to restrict the permeability, to prevent the oil from flowing into the well, he may enter into a number of remedial measures designed to enhance that production, all of which costs money, but normally much less than the drilling of a new well. If it is a well completed with an old shot hole, he might use nitroglycerine and shoot the well again, or he might acidize to remove some of the limestone, to open the permeability. He may also fracture it with water or the different "fracs" they have now, designed to create fractures in the producing formation and designed to bring in more oil.

This is happening today, and it is happening because of the stripper well amendment, and it is bringing immediate results.

The president of the Stripper Well Association said that he estimates that the increased production is about 250,000 barrels a day from stripper wells.

We estimated it in our office. One of my staff members, who is one of the few petroleum engineers in Washington, estimated the life of the average stripper well is extended 2.6 years by the stripper well amendment at the present time and this means that if this conference report would roll back the price and fix it in legal cement where it would stay, there is going to be a sharp reduction in the amount of stripper production that could be produced because it would not be economically feasible; it is marginal and there would not be the opportunity to stay on production because they would not be making a profit.

I ask if it makes sense to cause early abandonment of the stripper well in order to replace that barrel of oil with higher cost oil from a foreign country, to add to our balance of payments deficit and also to pay more money for a product that normally is not of such high quality. It makes more sense to encourage the stripper well operator who is going to keep his money in this country, where it goes from pocket to pocket and has the advantage of rubbing off on more people: and also it would not add to the problem we have of the balance of payments deficit.

So the loophole the Chairman referred to does not exist. A prudent operator is not going to drill a well because he does not want to drill a well and not have it produce; nor will he drill a well beside a good producing well because the most he could hope for would be to share in the production equally.

One thing that is happening in stripper well areas because of the extra incentive of higher prices, the operators of marginal leases are drilling step-out wells and other wells in the stripper field, increasing total production because at the present time in a certain field a three-barrel well may pay out the whole cost of the well, or a five-barrel well, whatever it is. So they are interested in adding to production that is available for refining and use in this country.

I thank the distinguished Senator from Wyoming for making this point.

Mr. HANSEN. I thank my distinguished colleague from Oklahoma.

Mr. President, I conclude by making two points. First, if we are concerned, as certainly we must be, by the Arab boycott, the best thing we can do is to increase our domestic production. It is that simple. If we do not want to give any foreign country a bigger club than they have with this short supply situation, we can do that by increasing our own production here, and we will not increase that production in this country by rolling back the price.

I am happy to yield to the Senator from South Dakota. I think that he and the Senator from Alaska have not concluded their colloquy. I am happy to yield now.

Mr. GRAVEL. I will let the Senator from South Dakota proceed first.

Mr. ABOUREZK. Mr. President, first I wish to ask, by way of getting some facts on the record so far as production and oil prices are concerned, if the chairman of the Committee on Interior and Insular

Affairs will answer several questions. He has indicated he is willing to answer the questions.

First of all, What is the price of uncontrolled oil in terms of domestic oil?

Mr. JACKSON. Domestically produced oil?

Mr. ABOUREZK. Yes. What is the price of new, uncontrolled oil in a stripper well?

Mr. JACKSON. The average price has been about $9. I am advised that in January the average price was $10.35 a barrel.

Mr. ABOUREZK. That is new, stripper well, and the controlled oil at this point, I understand, is selling for a controlled price of $5.25, and that price went to $5.25 in December 1973.

Mr. JACKSON. There was a $1 increase permitted by the Cost of Living Council.

Mr. ABOUREZK. It is my understanding there was no justification provided by the oil industry to the Cost of Living Council for that increase.

Mr. JACKSON. They alleged this was necessary in order to provide an incentive. An incentive for what, I do not know. They already were producing. There was no formal representation, to my knowledge, by the industry. The Cost of Living Council simply adjusted it upward.

Mr. ABOUREZK. I wonder if the May 1973 increase was done also without any cost justification.

Mr. JACKSON. Dr. Dunlop stated that the May increase of 35 cents was based upon cost increases, but the $1 increase in December was not justified by cost. If I recall correctly, Dr. Dunlop justified the December rise of $1 by the so-called disequilibrium between controlled and uncontrolled crude oil prices.

Mr. ABOUREZK. So we have gone up, as I understand it, about $1.40 or $1.50 a barrel.

Mr. JACKSON. $1.35.

Mr. ABOUREZK. $1.35 a barrel, and without any cost justification whatever. Now, under the provisions in the conference report——

Mr. GRAVEL. I think I understood my colleague to state that there was no justification given by the oil industry for an increase in price. Is that what my colleague and the Senator from Washington are saying?

Mr. JACKSON. There was no——

Mr. GRAVEL. We made a record in hearings in the Committee on Finance showing justification, part from the industry and part from the academic community.

Mr. ABOUREZK. Was there justification to the Cost of Living Council?

Mr. JACKSON. The answer to the question by the Senator from South Dakota is that the Cost of Living Council did not provide a justification for the December increase. The record is undenied on that point.

Mr. GRAVEL. I disagree with that record, because I have before me a paper from the Cost of Living Council, and they say the reason they did it was to create a desire within the domestic community to increase production, and they succeeded.

Mr. JACKSON. Wait a minute.

Mr. GRAVEL. There was a rapid increase in oil activity and it has been as a result of prices.

Mr. ABOUREZK. Mr. President——

Mr. GRAVEL. They are merely following the lead of Congress. They realized this worked so they tried it in November and again in December.

Mr. ABOUREZK. The question was: Was there any cost justification to the Cost of Living Council by the oil industry for the price increase of $1.35 a barrel?

Mr. JACKSON. May I respond? My response was and is that at the time the increase was granted neither the industry nor the Cost of Living Council gave a justification for those increases.

I do not know what the Senator from Alaska is reading from.

Mr. GRAVEL. For the last 15 years intelligent industry representatives have been pleading for a free market situation, starting with gas and, after 1971, with oil. They have been pleading to let the price rise so we can entice production. We had testimony from representatives of the Chase Manhattan Bank. I can show Senators the chart we received from Mr. Simon on this particular matter, and others. When he is testifying before a committee of Congress and gives a justification, if the Senator from Washington cannot accept that justification, that is fine. We have ample evidence.

Mr. ABOUREZK. Excuse me just a moment. Just the statement by the oil industry that they needed incentive is not cost justification in terms of what I consider to be justification. If their costs increase they should be able to justify them.

Mr. GRAVEL. If days and days of testimony cannot convince my colleague, obviously nothing will convince him, and he can say they offered nothing to justify it. They have been offering material to justify this for many years.

Mr. ABOUREZK. I mean, have they done it in the structured manner that most industries have to follow?

Mr. GRAVEL. They come before the committee, they come before the Senator and his committee, and me and my committee, and they make their case. If we do not like their case, we can query them. What justification do they have to have? Do we expect them to have an opinion poll of every member of the industry asking the question: "Do you want a dollar increase? Yes or no?" Is that the justification the Senator wants?

Mr. ABOUREZK. No. What I am now talking about is that procedure generally followed by any company requesting a price increase under the structure of the Cost of Living Council. It has to go before that office and show that costs of production have increased so that it needs an increase.

Mr. GRAVEL. We have had an 8.8 percent increase in the cost of living.

Mr. ABOUREZK. Was that offered as a reason?

Mr. GRAVEL. The testimony that was presented brought out that for the past 10 to 15 years we have had a flight of capital. So this administration finally came to realize, under the leadership of Mr. Simon, that the only way we are going to increase production is by making it profitable for money to flow back into oil.

I have a chart here. The chart shows the price and the amount that is allocated to the private sector for drilling for oil. They both have been going downhill. The administration realized that if the industry received an increase, perhaps it would drill for oil, and if it did, it might find it, and if it did it might be able to sell it to the American people, and if there were enough oil produced, it could proceed to decrease the price because of the increased production.

Mr. ABOUREZK. That really is not price justification.

Mr. JACKSON. I want to point out that in the debate on July 14, 1973, in connection with the stripper well amendment, on page S13438 of the Record there is a letter that the able Senator from Wyoming (Mr. Hansen) inserted in the Record from the National Stripper Well Association, Tulsa, Okla., dated May 19, 1972, addressed to the Price Commission.

It is a very interesting letter, Mr. President, in light of this talk about the need for a free market and $10.35 oil. I want to read this letter. We will see what they are talking about. I might also say to my friend from Alaska, when he is talking about the oil companies wanting a free market, I wonder where the international oil companies stood then when they had the import oil quota system. They did not want a free market; they wanted it fixed. They wanted quotas. They did not want oil to come into the United States because they wanted to keep prices up. I want to read this letter. I want to read from part of this letter, and I will ask unanimous consent that the entire letter then go into the Record.

Mr. GRAVEL. It is strong language to say that the oil companies wanted import quotas because they wanted to increase prices. They did it to decrease prices, not to increase prices. They wanted to be competitive when the Government would not permit them to be competitive.

Mr. JACKSON. Let us not kid ourselves. It is a price-support program. The program was to keep oil out, so that you would not drive the price of domestic oil down.

Mr. GRAVEL. It was not a price-support program; it was for defense purposes. I was not even in the debate.

Mr. JACKSON. I was here. I want to explain to the Senator that its purpose was to keep oil out, so that domestic oil prices would not go down. Instead of being self-sufficient, we went the other way. American companies drilled abroad. We went down from being a net exporter of oil to being a net importer of oil.

Let me read excerpts from the letter; then I shall ask that the entire letter be printed in the Record. It is from C. John Miller, president of the National Stripper Well Association. It appears on page S13438 of the Congressional Record of July 14, 1973. It is a very interesting letter. Let me read in part:

> A recent study by this Association indicates that a price increase of only 25 cents per barrel in crude oil from marginal wells would result in continued operation of approximately 15,400 wells which are expected to be plugged this year for economic reasons. As a result of such price increase, an additional 10.7 million barrels of crude could be expected to be produced in the following 12 months from wells currently facing abandonment.

Mr. Miller then goes on to say:

> However, substantial and prolonged results would be gained from a realistic crude price increase to $5 per barrel. In this case, and using the same limiting

factors, a well would produce for 6 years before a new break-even point would be reached.

Now we have reached $10.35 a barrel. What has happened? It is very obvious that they do not want to curtail that price, which is the price set by OPEC. I would point out that the Independent Petroleum Association said only 2 months ago that:

In terms of constant 1973 dollars, the average price of $6.65 per barrel for crude oil would be needed over the long run to achieve 85 percent self-sufficiency in oil and gas by 1980.

It is clear that what the oil companies are talking about is not any specific target price. They want to get whatever they can get at the world price.

I think it is tragic, when we are confronted with a situation in which they used these figures for the current purpose as late as December. In December, the National Petroleum Council had a target price of $4.50. But when oil jumped to $10.35 or $10.55——

Mr. FANNIN. It is not true that the extent to which oil can be pumped from these wells is dependent on the price? Many of the wells are marginal. They would be marginal at $5.25; they would not be marginal at $18. Is that not true?

Mr. JACKSON. I do not know. The point I want to make is that taking their figures——

Mr. FANNIN. That is true; but we want to recover more oil. They sell it to the independents, and here we have the independents reporting to us that for every barrel of oil they produce in Texas, they must dispose of two barrels of prime. That is quite expensive. At $5.25, they could not possibly do that. At $8, they could.

All we are talking about is the 84,000 wells in Texas that produce only 3.4 barrels a day. However, in the combined pool of that structure, there is 1.8 billion barrels of oil. This is what we are talking about it. It takes more money. However, why should we not pay that much when we get our own oil?

Mr. JACKSON. Mr. President, are they producing any more oil at $10 a barrel than at $6 a barrel?

Mr. FANNIN. Absolutely. They are producing more oil at $10 a barrel than they were at $6 a barrel.

Mr. JACKSON. Does the Senator have any statistics?

Mr. FANNIN. The operators say that they cannot produce oil unless they have a price of around $8. This is probably true.

Mr. JACKSON. Mr. President, I am reading from the statement of the president of the National Stripper Wells Association of last year. It was $5 a barrel last year.

Mr. GRAVEL. How much did they say they were producing?

Mr. JACKSON. I do not know.

Mr. FANNIN. I am sure that the Senator will agree that in many wells they cannot recover the oil at that price.

Mr. JACKSON. Mr. President, we have debated the stripper well amendment. Did anyone come in here and say that if we increase prices from $3.90 to $10 a barrel, we can get strip well production?

Mr. FANNIN. Did anyone realize it then? Nobody realized it.

Mr. JACKSON. However, the Senator is not saying that the price to get them producing jumped that much?

Mr. FANNIN. I am saying that the price was there to begin with.

Mr. JACKSON. Why did they not say it? I am referring to what was debated here at the time.

Mr. FANNIN. No one thought the oil would ever go to that level and that they would be able to recover that oil.

Mr. JACKSON. Mr. President, if it goes to $50 a barrel overseas, should we be able to charge $50 a barrel here also?

Mr. FANNIN. No. However, if we roll the price to $6 or $6.25 a barrel, it could be done. We are talking about rolling it to $6.25.

Mr. JACKSON. Mr. President, I have read from the Record when we were debating the stripper well amendment, we were talking about a maximum of $5 a barrel. I was quoting directly from the letter of the president of the Stripper Well Association. I think the record speaks for itself.

The logic of the argument is simply that the price of oil can go to any level worldwide, and then that level is reached over here.

Mr. President, this is the way to destroy the American economic system.

We had spot prices in Iran that went as high, I think, as $28 a barrel. If they want to destroy our free enterprise system, I cannot think of anything more effective than that. These are not market prices. They are cartel prices.

Let me say to my good friend, the Senator from Alaska, in connection with the pipe shortage, that there is a very interesting article in the Oil & Gas Journal of February 4, 1974. The headline is "Pipe Shortage Blamed on Majors' Stockpiling."

I will read pertinent paragraphs from the article and will then have it printed in the Record. It reads:

> The shortage of oil-country steel among independent operators was blamed last week on stockpiling by major oil companies.
>
> A study by the Government showed that, on the average, as of Dec. 1, 1973, stocks of the 22 largest oil companies were 30% greater than their monthly average since Jan. 1, 1972. Furthermore, the Federal Energy Office and, eight of these companies held 74% of the inventory.
>
> * * * * * * *
>
> The shortages are real to independents, in particular, and to some of the majors as well "as a result of higher than normal inventory of tubular goods by some of the major companies," FEO said.
>
> * * * * * * *
>
> If adequate rigs were available, FEO says the demand for tubular goods would be still higher this year. The task force is also looking into the problem, as well as availability of associated services and manpower.
>
> Pipe is available only on a steel-mill order basis, FEO said, adding that an order placed now by a consumer, either with the mill or through a distributor, cannot be completed for 9–12 months.

Mr. President, I call attention to the fact that there is authority in the pending bill to provide for allocations. Section 107 provides for material allocations. It can be moved from the large companies, the majors, that have a corner on this, to the independents.

So I think the Record ought to be made very clear as to what is going on and who has what and why. These are findings by the FEO.

Mr. President, that concludes my statement.

Mr. GRAVEL. Mr. President, the Senator from Washington makes the best point of all for my argument—namely, if it is tied up, all the money is lost and economics prevail.

The people who bought up the necessary stocks to satisfy their demands took the money and bought up the necessary stocks. They

paid 2 or 3 times what those tubular goods would normally be worth. That is exactly what happened. Now we have a bill to insure that it not only happens to the majors but also happens to the United States, because we will make more money to be able to compete. The foreign countries are competing unfairly with the Americans. How can the American oil companies compete and buy rigs, tubular goods, and all of the technology necessary to drill when we can sell a product for $5 and a foreigner can sell it for $10?

The Senator from Washington says that we have **section 107.** That is just a booby trap. It really says to the administration that we will create a problem and that the administration can come forward and clean up our mess. It says that the administration shall come up with a plan in 30 days with respect to all of these products. That is insanity, because it is a return to the economics of fortress America.

We have to compete. If we in the United States embargo the technology necessary to hand the product inside of the wells, we can shut down every market in the world.

That would be the beginning of an international trade war. I know that the distinguished Senator would not want to see that because of the difficulties we could experience, difficulties such as when we had a run on the dollar.

My distinguished friend very ably proved my point on the law of economics.

Mr. JACKSON. Mr. President, **section 107** is not an embargo authority. I am very amazed that my friend, the Senator from Alaska, wants to justify a hoarding by the multinational oil companies, and they have over half of it.

Section 107 makes it possible to take it away from those who are hoarding.

Mr. President, my second point is a very simple one. It goes to the heart of the whole business where there has been an argument going on for months in the Senate that if the price of oil would only go up, production would go up. I have two tables here with FEO and industry statistics on crude of prices and production. I ask unanimous consent that they be printed in the Record at this point.

There being no objection, the tables were ordered to be printed in the Record, as follows:

AVERAGE U.S. WHOLESALE PRICES OF CRUDE PETROLEUM

[Cost per barrel]

	Domestic old	Domestic new	Average domestic
1971	(1)	(1)	$3.38
1972	(1)	(1)	3.39
1973:			
January	(1)	(1)	3.40
February	(1)	(1)	3.40
March	(1)	(1)	3.41
April	(1)	(1)	3.47
May	(1)	(1)	3.62
June	(1)	(1)	3.78
July	(1)	(1)	3.79
August	(1)	(1)	3.86
September	$4.18	$5.12	4.27
October	4.11	5.62	4.49
November	4.25	6.17	4.73
December	5.25	9.51	6.31
1974: January	5.25	10.35	6.75

[1] Not available.

Source: FEO estimates.

DOMESTIC PRODUCTION OF CRUDE OIL AND NGL

[In millions of barrels per day]

	Crude and condensate	NGL	Total
1971	9.463	1.692	11.155
1972	9.441	1.744	11.185
1973:			
January	9.179	1.680	10.859
February	9.373	1.745	11.118
March	9.175	1.734	10.909
April	9.233	1.749	10.982
May	9.290	1.739	11.029
June	9.209	1.727	10.936
July	9.195	1.737	10.932
August	9.161	1.748	10.909
September	9.077	1.741	10.818
October [1]	9.331	1.750	11.081
November [1]	9.118	1.750	10.868
December [1]	9.143	1.750	10.893

[1] IPAA sources with exception of October-December 1973 statistics.

Note: API estimates.

Mr. JACKSON. It is interesting that the average domestic price on January 23, 1973, was $3.40 a barrel.

By January 1974 it had almost doubled to $6.75 a barrel.

What happened to production? It stood still. Production did not increase. It started out——

Mr. FANNIN. Will the Senator yield on that? What is the source of that?

Mr. JACKSON. I will give the Senator the figures.

Mr. FANNIN. All right, fine.

Mr. JACKSON. In January 1973 production stood at 10,859,000 barrels a day, and at the end of the year, it stood at 10,893,000 barrels a day, and the price doubled. What happened to production?

That is all I have to say.

The figures come from sources that I know he would agree is absolutely reliable, the Independent Petroleum Association, and the American Petroleum Institute.

Mr. FANNIN. I will not take the time now, but it is——

Mr. ABOUREZK. Mr. President, I have the floor.

[Several Senators addressed the Chair.]

The PRESIDING OFFICER. The Senator from South Dakota has the floor.

Mr. FANNIN. Will the Senator from South Dakota permit me to say——

Mr. ABOUREZK. Let me say to the Senator from Arizona that if I can finish my question, I will be happy to give him the whole shooting match, as soon as I finish. I have tried to accommodate everyone during the debate.

Mr. JACKSON. Everyone but the Senator from South Dakota. Be careful; you know there is a lot of hoarding going on here.

The PRESIDING OFFICER. The Senator from South Dakota has the floor. Does he desire to yield?

Mr. ABOUREZK. Mr. President, I think we established, before we got off on another track, all the prices, as I recall, of oil as it is selling today. The price is $10.35 a barrel for uncontrolled oil, and $5.25 under the controlled price. If you figure out an average of what that would be—I have done it with some arithmetic here——

Mr. JACKSON. May I correct one thing?

Mr. ABOUREZK. Yes.

Mr. JACKSON. The $5.25 figure is an average figure, because you have different grades of crude oil, but that is the average, regulated price—$5.25—of sweet crude and sour crude.

Mr. ABOUREZK. And so is the $10.35.

Mr. JACKSON. That is correct. I wanted to be sure that the record was straight on that.

Mr. ABOUREZK. And the domestic production right now is 11.2 million barrels a day?

Mr. JACKSON. I think that is in the ballpark.

Mr. ABOUREZK. So that comes out, in essence, to a minimum cost to the American public, per day, of $76.5 million, if my figuring is correct. That is what it is costing the American consumer for oil produced domestically in this country.

Mr. JACKSON. That sounds right, if it computes accurately.

Mr. ABOUREZK. If this rollback goes into effect, as I understand it, it will freeze all oil prices, old, new, stripper, and whatever else, at $5.25 a barrel, plus a 35-percent optional increase if the President can somehow justify the cost. Is that an accurate statement?

Mr. JACKSON. Yes; it sets the ceiling. It could go lower than $5.25. That is not a floor; that is a maximum.

Mr. ABOUREZK. And it could go as high as $7.09 a barrel, if my figures are correct.

Mr. JACKSON. Yes, if the President—and only if the President—makes a detailed finding demonstrating that there is an unusual or specific requirement that necessitates such an upward adjustment. I will read the exact language.

Mr. ABOUREZK. No, that is all right. In other words, in trying to establish that my arithmetic also shows that if it does go up to $7.09 a barrel, the cost to the consumer per day of domestically-produced oil can be about $78 million a day.

Mr. JACKSON. How much?

Mr. ABOUREZK. $78 million, which is our daily production multiplied——

Mr. JACKSON. That is the total price, yes. But I would not anticipate that it will go up to that level.

Mr. ABOUREZK. I would hate to make book on what President Nixon will do with that option, very frankly.

The point I am trying to make to the distinguished Senator from Washington is that if the Senate passes this particular price provision, which is called a rollback by some people—I call it a price increase provision—if we pass this provision, I would be willing to bet that we will never see any crude oil priced lower than $5.25, and most likely we will see crude oil priced at $7.09 a barrel within a very short time, and it will go on from there, and we will never be able to achieve a real price rollback, where the oil industry will have to justify whatever increased costs they incur for production of oil.

Mr. JACKSON. The Senator has to decide whether is going to allow it to go the way it is going. That is, that by the end of this year, based on existing projections, we are going to have as much as 42 percent of all domestically produced crude oil unregulated, and that will have a disastrous impact on the economy.

Mr. ABOUREZK. Yes, I know.

Mr. JACKSON. This is what you have to decide. We provided elasticity in this formula for the simple reason that there is a justification for a price adjustment in those operations where the cost per barrel is very high, as compared with a gusher well. This is what we have to face up to, and this is what we attempted to do.

The Senate has a choice, here, of whether we are going to have unrestricted pricing of petroleum product, which will increase the price on everything—we have seen that in what has already taken place. The Senate has to decide also whether we are going to have an unfair apportionment of the product from the barrel of crude oil. That is what is happening now. Take propane prices as an example, which have gone up 3½ times in a matter of weeks. Such price increases are killing the little people in this country. The Senate has to decide whether we are going to permit to become law the formula which we have in the legislation, which requires an equal apportionment of costs among the refined products.

I would point out further that the airlines are being clobbered. The price of kerosene has gone up from 11 cents to over 40 cents per gallon, because they are at liberty now, under existing law, to apportion it any way they want to.

Without this bill, the President could decontrol the oil to $10.35. We stopped that.

Mr. ABOUREZK. Yes, without this bill; I agree with the Senator from Washington that without this bill that is true. But in addition to that, if we do pass this particular price freeze provision in the conference report, I would not hesitate at all to predict that there will never be another rollback bill which will have any effect whatsoever.

Mr. JACKSON. It is a ceiling, I emphasize, and there is no ceiling now.

Mr. ABOUREZK. Yes.

Mr. JACKSON. Therefore, you take your choice. It is a difference between a ceiling we know about—there is not a ceiling now, and prices are at $10.35—and $7.09, which is a difference of $3.26 per barrel. That is a lot of money.

Mr. ABOUREZK. Mr. President, there are people in my State of South Dakota at this time—I just returned, like almost everyone else in Congress, from my own State and my own district—there are people in my district of South Dakota, particularly the elderly, the Indians, and low-income people, who, with the price of fuel right at this time, which has increased by tremendous proportions, have to make a choice between food and fuel at these prices. If we are not going to roll them back any further than this, I am afraid that, as the Senator has said, there is going to be violence.

Mr. JACKSON. The poor people in the rural areas of my State depend on propane. We have rolled back propane specifically. Under this bill its price will be rolled back, I think, some 14 cents a gallon.

Let us do something about it. This is the best we could get out of the conference. That is what I want to say to my good friend from South Dakota. But I do not think the Senator from South Dakota wants to go on record and say he wants the price of propane to stay way up.

Mr. ABOUREZK. Oh, no.

Mr. JACKSON. There is a specific rollback provision. I think my colleagues have to decide whether they will do anything about the prob-

lem. We have been on this since last October, trying to get the best bill we could.

Mr. ABOUREZK. I want to point out that while we have been arguing this issue for weeks and months and some people think we have cut prices too far, and as we have heard in the debate today, I do not think we have rolled them back far enough by a long ways. We should put them back to the January 1973 prices and then put the burden of proof on the oil industry to see if they need a cost increase. Further, while we are doing that, I want to make the point that the President does have the authority under the Economic Stabilization Act to roll back prices to whatever level they should be, and he has not done it.

Mr. JACKSON. But we are mandating a lid here by action of Congress. Just because we cannot get everything in a bill—I have been here a long time and I learned a long time ago that we have to compromise. This is the best we can get. We are going to save here $20 million a day, which amounts to some $7.7 billion a year. That is a big saving.

If we do not do that and we allow this inflation to go on, it will go on to another higher plateau. Then when we come in here later and try to roll it back, we will not be able to roll it back even as far as we are now. That is my judgment.

Mr. ABOUREZK. The Senator says we will save over $7 billion a year. Looking at it either way——

Mr. JACKSON. As against no controls on oil.

Mr. ABOUREZK. There is also another point. We can also roll it back further. It depends on whether the glass is half full or half empty.

Mr. JACKSON. If we wait to come in here 6 months later and try to do this, we will not get legislation through to roll back prices to the level as low as the Senator from South Dakota is talking about. We will have other factors aggravating the situation.

Take Canada. There was discussion on the floor about the price the Canadians are charging. The Canadians came back at us and said, "Look, we are going to put a tax on that is equal to what you are paying your own producers of unregulated oil." Let us face the fact that our largest source of supply from abroad is Canada—1 million barrels a day.

Mr. President, they just said to us, "We are not going to put our price below what you are paying your producers on an unregulated basis."

How can we ask OPEC to roll back its prices if we do not roll back ours?

They will come back and say, "Well, look you are just following the same price scheme that we have set——

Mr. BARTLETT. If the Senator would yield there, is the Senator trying to imply that OPEC is going to roll back its prices?

Mr. ABOUREZK. I would like to try to make just one more point. Let me just finish, if I may, and then I will be happy to yield the floor.

I was not suggesting that we wait a few months for a rollback. For the first time, we can undertake our responsibilities and do it now, because we are here and in session. We should do it. What I would like to see done is this provision being removed or, in the alternative, lowered lower than it is now. If the chairman of the committee says he cannot get it done in conference, we should try to do it on the floor.

Mr. JACKSON. If the Senator will join me, I will help him. I have a bill before the committee and we properly held hearings on a rollback bill, that is open to amendment in the Committee on Interior and Insular Affairs, separate from the conference report.

Why kill the whole bill? It has provisions for unemployment insurance. It requires public disclosure by the oil companies of their assets and their holdings. There is a long list of things in the bill, including antitrust provisions, and provisions providing for protection of air quality standards during the energy crisis. We will be killing a bill—if this is what the Senate wants to do—that has all of these vital requirements in it, that we have been debating and discussing since last October.

Look at the independent operators. We provide for protection to that little independent operator with a franchise. Under this bill, they cannot cancel his franchise. It is the long list of things that we are going to kill. Perhaps the Senator from South Dakota feels it will not matter, that these other things are not necessary. That is something each Senator has to decide for himself. But we have to look at the whole bill. I have never found a bill yet that I agreed with everything in it. This is the best we could get. We have been back to conference on a recommittal once and if it goes back again, it will just be dismembered.

There are 250,000 men out of work today due to the oil crisis—the energy crisis. We have, as you know, a provision in here to provide for a year's unemployment coverage if the State meets the minimum 6 months requirements. **[Sec. 116.]** All of these things are crucial. They are vital. I hope that my good friend from South Dakota will look at the entire bill and not at one paragraph.

Mr. ABOUREZK. I am not suggesting that we kill the bill——

Mr. JACKSON. I can assure the Senator that——

Mr. ABOUREZK. But that we kill the price freezing provision that has been called the price rollback provision, and then I would be happy to support it.

Mr. JACKSON. The last time we debated this bill, those who voted to recommit it were saying they did not like the provision of the excess profits. Well, we did not have an excess profits provision in there. We had the so-called renegotiation provision, put in there by the House. I was not happy with it. My colleagues know this. We tried everything we could to avoid that unworkable situation. We passed the bill in the closing days just before Christmas. We took out that provision and sent the rest of the bill to the House and the House rejected it, with 20 votes supporting the Senate amended bill. If we send an amended bill to them again, let us forget it. We will have to start all over again. What we have here is a complete omnibus bill which I think is crucial so far as the energy crisis is concerned.

The head of the FEO will be able to do something about the people standing in line. He has the authority to ration. He has all of the necessary authorities that he does not have today. I think we should look at the whole bill and I would hope that my colleague from South Dakota would approach it on that basis and vote against any motion to kill the bill, because that is what is going to happen if the motion prevails. The oil industry is active in trying to kill it. The White

House is active in trying to kill it. They are lobbying all over the place. I would hope that there will be enough people in this body who will support what I think is a very sensible bill.

Mr. President, I would also like to place in the Record at this time an exchange of letters referring to yet another provision of the bill, section 106. The letters refer to a recently reported study on the health-effects of sulfur dioxides.

There being no objection, the letters were ordered to be printed in the Record, as follows:

U.S. SENATE,
Washington, D.C., February 18, 1974.

Mr. S. DAVID FREEMAN,
Director, Energy Policy Project,
Washington, D.C.

DEAR MR. FREEMAN: I understand that the Ford Foundation has funded, through your Energy Policy Project, a study by the American Public Health Association regarding health effects of energy by-products.

Recent news accounts of this study suggest that the report is directed to the matter of conversion of electric power plants from petroleum-based fuels to coal. Because the Senate will consider legislation tomorrow which would direct or permit certain limited conversions of this type, I would appreciate a copy of the referred-to study.

I am particularly interested in the basic assumptions of the study; how it relates to the pending legislation; and the extent to which its findings could or should be applied to the legislation before the Senate.

Thank you for your cooperation.

Sincerely,

EDMUND S. MUSKIE,
Chairman, Subcommittee on Environmental Pollution.

THE ENERGY POLICY PROJECT,
Washington, D.C., February 18, 1974.

Senator EDMUND S. MUSKIE,
Chairman, Subcommittee on Environmental Pollution, Senate Public Works Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR MUSKIE: This is in response to your letter received this morning for a copy of a study of "Health Effects of the Various Forms of Energy" undertaken as part of the research for this Project by a Task Force of health experts assembled by the American Public Health Association. I am responding to your letter since the APHA officials are not available because of the holiday.

Members of my staff have had access to some working papers associated with the study but a completed draft has not been submitted to us. When it is the study will be reviewed by outside experts and will then be published. I therefore cannot supply you with a copy of the study because as far as I know it has not yet been completed even in a preliminary draft.

The grant to the APHA was made in December of 1972 to undertake a comparative evaluation of the health effects of alternative source of energy on the basis of available information. Our purpose was to provide such an evaluation as part of our Project's analysis of national energy policy options in order to give relevant weight to the important objective to protecting human health. The study was designed as part of the Energy Policy Project's objective of providing public information in the energy field. It, of course, had no relationship to any legislation and in fact was designed and well underway before the present emergency situation began in October of 1973.

It was certainly not designed to answer the questions inherent in the emergency legislation before the Congress which I gather turns on judgments as to how long the emergency may last.

Sincerely,

S. DAVID FREEMAN,
Director.

Mr. GRAVEL. We do not have a great deal of wheat in Alaska, but I know that the Senator from South Dakota has a lot of wheat in his State. I am not terribly expert in that field, but I do know that the price of wheat in the world market trebled in 1973. I wonder whether there is any justification on a cost basis for wheat going up three times.

Mr. ABOUREZK. I do not even know if that is a proper parallel to make, simply because the wheat producers in South Dakota and anywhere else in the rain belt in the middle part of the country do not really set the price on the products they sell. They take what they are offered and if they do not like it, they can dump it. They have to take what they are offered.

Mr. GRAVEL. Is there not a guaranteed parity on wheat so that they do not have to throw it away, and they will make money?

Mr. ABOUREZK. It takes subsidies, but they are not in use this year because the market price is up.

Mr. GRAVEL. To be fair to my colleague, he is aware that in wheat we have a parity and if we produce too much——

Mr. ABOUREZK. Not in parity, no—we have a subsidy which is not anywhere near parity.

Mr. GRAVEL. If a fellow produces too much oil, is there anyone who will buy his oil at a set price so that he will recover the cost of his drilling?

Mr. ABOUREZK. The Senator says, if he produces too much oil will there be someone there to buy it?

Mr. GRAVEL. If he cannot sell his oil at the price of the guarantee, they will have a minimum purchase and someone will store it for him?

Mr. ABOUREZK. I do not believe so.

Mr. GRAVEL. Wheat has trebled, oil has trebled, which is about the same thing. My colleague feels that the argument is that there is no cost justification for this trebling of the price of unregulated oil at $9.51, and therefore we should roll it back. Would not that same logic apply to wheat. We all need bread and flour and all the other things from wheat? Would it not apply that we should roll that back, also?

Mr. ABOUREZK. If it goes too high, yes.

Mr. GRAVEL. They both trebled in price in 1973. Is there something wrong with oil?

Mr. ABOUREZK. If I may finish my statement, the prices to farmers were way too low, and that is why they had to have subsidies. The Senator from Alaska knows that. What the farmers are getting now is just about an adequate price, and they are making an adequate profit. Before oil prices increased—which were not set by the buyer but were set by the seller, the producer of oil, generally the major oil companies——

Mr. GRAVEL. What is an adequate price?

Mr. ABOUREZK. Let me finish my statement. What has happened is that the oil companies have been making adequate profits. Now they are making windfall profits, and they are going to make more this year and more next year.

Mr. GRAVEL. The wheat business has trebled their price in 1 year, and they are not making any windfall profits?

Mr. ABOUREZK. No; they are just making adequate profits.

Mr. GRAVEL. What is adequate?

Mr. ABOUREZK. They are making a living now, for a change.

Mr. GRAVEL. What is the return? The Senator is a farmer.

Mr. ABOUREZK. I am not a farmer. I am a lawyer.

Mr. GRAVEL. The Senator has a constituent with a million dollar equity in his farm. What is he making this year? What is the return on his capital?

Mr. ABOUREZK. I do not know what it is this year, but before the prices increased, before 1972, he was making about 1 percent.

Mr. GRAVEL. One percent return?

Mr. ABOUREZK. One percent on his investment.

Mr. GRAVEL. Then I agree with the Senator that we should raise the price of wheat so that he can get a decent return. Otherwise, nobody is going to invest in wheat.

Mr. ABOUREZK. If the Senator from Alaska, who continues to talk about the laws of economics, would bear with me for just a minute, I might say that the laws of economics were repealed a long time ago, when the oil industry grew to a monopoly. I do not recall the figures, but I believe that 90 percent of the oil reserves are owned and controlled by the 20 top companies. As I understand it, that is a monopoly in the oil industry.

Mr. GRAVEL. That is not nearly as monopolistic as most American industry.

Mr. ABOUREZK. The laws of economics were repealed by the oil companies and the oil industry when it grew to a monopoly, whenever that happened. So that what we have now is something that does not apply to the laws of economics, simply because they have grown to a monopoly. They have gotten the Government involved in tax benefits, in oil imports restrictions.

Mr. GRAVEL. We have not done that in wheat? We have not repealed the laws of economics for wheat?

Mr. ABOUREZK. If the Senator from Alaska will allow me to finish, I would be most grateful.

We have the situation that follows now, in which they can demand, without price control, almost any price they wish, and they would be above $10.35 a barrel if they thought they could get away with it.

The people in my State—I do not know about Alaska—are choosing between food and fuel, and it is a tough choice for many people out there.

If the oil companies, who say they need some kind of profit incentive to keep going, are not satisfied with an adequate profit, then the U.S. Government ought to take over the oil reserves and let out the drilling and production and refining, and so on, and see what real competition is like.

Mr. GRAVEL. Let me ask the Senator what he would consider the average return on manufacturing, the average profit on manufacturing, in the average industry in this country? Would he say that is an adequate profit?

Mr. ABOUREZK. I have no idea. What is the average return?

Mr. GRAVEL. This is not a trap.

Mr. ABOUREZK. What is the average return?

Mr. GRAVEL. It is about 13 percent; 12.5 to 13 percent is the average return.

Mr. ABOUREZK. Based on what?

Mr. GRAVEL. On equity.

Mr. ABOUREZK. On investment?

Mr. GRAVEL. Yes. Someone invested his money, and if he gets 12 or 13 percent, that is average in this country for manufacturing. Is that adequate?

Mr. ABOUREZK. It seems to me that it is more than adequate.

Mr. GRAVEL. The oil industry, on average, has been one to two points below average in its profit return for the last 15 years; and Exxon, the one we would like to throw rocks at, only made 12 percent this year on domestic activity. So they are one point below the average of manufacturing. How can anybody say that this is a windfall profit?

Mr. ABOUREZK. I wonder whether the Senator from Alaska knows anything about the accounting system used by the oil industry.

Mr. GRAVEL. I have some knowledge of it.

Mr. ABOUREZK. Is it any different from that used by ordinary industries, such as airlines?

Mr. GRAVEL. I think that each accounting system is germane to the activity in question. With respect to the wheat and land and farming and subsidies and the Government payoffs, you have a system in which you play with your financial statement. So you do things with your financial statement that serves a purpose.

I asked the same question the Senator from South Dakota did in a hearing, because I was suspicious of the machinations that have taken place. We hear this charge here and that charge there. But when we come to the final report card, the American people, does the Senator know what the true test is? Are the American people willing to invest their money? That is, the Senator and me and John Q. Public. Are we willing to take our dollars that we saved and invest them in an industry? If we are, then what we are saying, collectively, is that it is profitable to move into that industry.

For the last 15 years, the American people have said "no" to oil. Here is the chart of the capital activity that has taken place in oil and gas, and it shows there has been a flight of capital. Why the flight of capital? It is very simple. It is not profitable—just like wheat. It was not profitable to do it, so we had to prop it up.

Mr. ABOUREZK. There has been a flight of capital because of the oil import quotas which were put on at the request of the oil industry and which were kept on at the insistence of the oil industry, and it was cheaper and more profitable for them to invest overseas.

Mr. GRAVEL. There has been a great misunderstanding. I think the Senator from Washington alluded to it, and did so erroneously.

First, as to the quotas, there was an argument made in this country by segments of the oil industry and by segments of those people in Government who are particularly concerned about our defense posture. The argument was made that if we did not have enough oil to satisfy the present and projected needs in this country, we would become dependent upon foreign nations.

Incidentally, that is exactly what the situation is today with our Mediterranean fleet and our NATO forces which cannot move 10 miles without the beneficence of foreign governments. Be that as it may, that is what they were afraid of. So they were able to sell this to Congress, and we had an import quota system.

It worked very well for the purpose, except for one thing. There was another element in Congress that barely won—if I may have my colleague's attention.

Mr. ABOUREZK. The Senator may. I was checking on a point he mentioned. It was not a program voted on by Congress. The oil import quota system was put in effect by Executive order.

Mr. GRAVEL. I accept that correction.

In the last year of the Eisenhower administration, 1957, a quota system was established by the Executive and obviously was sustained by Congress on a de facto basis, because they could have passed a law to the contrary immediately. So we had a de facto agreement between Congress and the Executive that it was in the national interests of this country from a defense posture and from an energy point of view.

Many people took the argument in Congress and said, "What is this? The oil companies want to feather their nest by having an artificially high price to produce more oil or to enrich themselves."

What happened? Through the pressures of Congress and through the reticence and lack of decisiveness in the Executive, we began to see a quota system. There was an exception for this company and that company, an exemption so we could bring in cheaper oil from the Caribbean. As a matter of fact, all the exceptions were valid and acceptable to the American people, because they wanted cheap oil. The only way to get cheap oil was from abroad. The Arabs had cheap oil. As a matter of fact, American oil companies in the 1960's—that is what started OPEC—rolled back the price of oil unilaterally on the Arab countries. They did it to get cheaper oil to the United States.

Mr. ABOUREZK. What percentage of imports were in existence at that time?

Mr. GRAVEL. I do not have the figures offhand. It was a growing figure.

Mr. ABOUREZK. Was it 5 percent of our total use, our total consumption in this country? Was it less than 5 percent?

Mr. GRAVEL. I do not know.

Mr. ABOUREZK. The statement given late last year by the administration was 6 percent, and this was 1973; so that 6 percent of our total use came from the Middle East or embargoed countries.

The Senator's argument that the oil companies were trying to bring cheaper oil to the United States by pushing back prices in the United States does not ring valid because they were not providing enough oil from the Middle East.

Mr. GRAVEL. We are talking about the total world market. If the oil came from Venezuela, or Canada, the total world market is involved. If there is a lot of oil and someone drops the price, other countries have to follow suit. All OPEC countries have to follow suit.

Mr. ABOUREZK. The reason there was not enough oil being brought in make a lot of difference. I find it hard to believe that these companies have the interests of America at heart.

Mr. GRAVEL. These people, like the Senator and I, are Americans. I think it is unfair to say they are thieves and ripoff artists. How would the Senator feel if that were said about his wheat farmers.

Mr. ABOUREZK. It is not true.

Mr. GRAVEL. It is not true there, nor is it true about the oil industry here.

Mr. ABOUREZK. The top executive of Phillips oil said on CBS television. when he was asked if it came to a choice between his company's interests and the country's interests which he would choose, and he said he would take the company's interest. I do not know how many feel that way, but one does. It tends to prove they do not really care. If they did. they would not be price gouging the people of this country.

Mr. GRAVEL. Doubling the wheat price is not gouging, but with respect to oil it is. Is that right? We covered that ground.

Mr. ABOUREZK. If I may finish my statement, if it got to be price gouging on the part of wheat farmers, I would be one of the first Members of the Senate to do something about it, but they do not set the price.

Mr. GRAVEL. The Senator cannot stand here and tell me how much profit they are making. I have a relative who grows a little wheat. I know what a good year they had, if the Senator wants to talk about increases in profits. It has been substantial. They were starving before. They had a growth of profit that was unbelievable. When they have had a return equal to the industry average how can the Senator make that statment? It is not so.

Mr. ABOUREZK. When did they have this return equal to the average industry. Does the Senator mean 1973?

Mr. GRAVEL. 1973.

Mr. ABOUREZK. They had an average return.

Mr. GRAVEL. Let us take Exxon.

Mr. ABOUREZK. That is before the price went up.

Mr. GRAVEL. That is the end of the year.

Mr. ABOUREZK. That is before the new oil was $10.35 a barrel.

Mr. GRAVEL. The figure I have is $9.61 in November. Maybe in February it is $10.

Mr. ABOUREZK. How much was it in July of last year?

Mr. GRAVEL. This oil was not deregulated then.

Mr. ABOUREZK. How much?

Mr. GRAVEL. $3.77.

Mr. ABOUREZK. How about September for new oil?

Mr. GRAVEL. I beg the Senator's pardon.

Mr. ABOUREZK. How much in September?

Mr. GRAVEL. $4.02.

Mr. ABOUREZK. New oil.

Mr. GRAVEL. Oh. new oil; $5.06.

Mr. ABOUREZK. So even with those prices on new oil and old oil being down to $4.25 they made just about the average profit according to their bookkeeping system. Now, with prices going up considerably since then, what are they going to make this year?

Mr. GRAVEL. That is pretty interesting arithmetic. The Senator has lumped together returns of the last quarter and has said that is average. How does the Senator know it did not take the balance of the last quarter to make the year right?

Mr. ABOUREZK. I am taking the Senator's statement.

Mr. GRAVEL. That is it for the entire year. I do not have a breakdown quarter by quarter.

Mr. ABOUREZK. The first 3 quarters oil never went above $5.

Mr. GRAVEL. What was wheat?

Mr. ABOUREZK. Just a minute. Let us talk about oil.

Mr. GRAVEL. They both trebled. Wheat is more a factor in the family budget than is oil. Why go through a cathartic process of slitting the throat of oil when wheat had as much impact on the cost of living?

Mr. ABOUREZK. Is wheat involved in this conference report?

Mr. GRAVEL. No. let us talk about oil, but we should be consistent. I presume my colleague recognizes the needs of the country and wants to see more capital flow into oil production. which would depress prices.

Mr. ABOUREZK. If we decrease the prices of oil now that will increase production.

Let me say that if there were not a monopoly it would be true but they control the price in a very small, select group of oil companies. They control most of the production and there is no way they are going to lower prices.

Mr. GRAVEL. Is the Senator saying there is more free enterprise in wheat than there is in oil?

Mr. ABOUREZK. A great deal more.

Mr. GRAVEL. There is no monopoly on the part of people looking for oil. There are 10,000 independent oil producers looking for oil. How many independent wheat farmers are there in this country?

Mr. ABOUREZK. One or six million.

Mr. FANNIN. Mr. President, will the Senator from South Dakota yield?

Mr. GRAVEL. Maybe the Senator from Arizona can enlighten us.

Mr. FANNIN. I was going to give a few figures that might be helpful. We are all interested in higher production.

Mr. ABOUREZK. The Senator from Arizona is not too concerned because he is arguing for higher oil prices.

Mr. FANNIN. There will be lower oil prices as the end result. But I would like to give a few figures to indicate the percentages of the cost-of-living price. For energy it is 6 percent; food is 22.5 percent; but in 1973 food increased 20.1 percent and energy increased 18.6 percent.

Just to give an idea so the Senator will know what we are up against, the percentage increases in 1973 were as follows: For ferrous scrap, 92 percent; all nonferrous metals, 32.5 percent; raw cotton plus all cotton products, 32.4 percent; raw wool plus all wool products, 18.3 percent; corn. 65.8 percent; wheat, 102.7 percent; soybeans, 43 percent.

I regret as the Senator from South Dakota does that these prices have gone up to this extent; but I still feel that if we pass this legislation as now constructed, prices will continue to increase. For every barrel of oil we do not produce in this country—and this conference report does not give any incentive to produce more oil in this country—we must displace it with a barrel of foreign oil. The cost of foreign oil has been going from $10 to $20 a barrel. That is as much as domestic crude. This is something very important. Also I call to the attention of the Senator that "because of the improved prices for crude oil that occurred in 1973 there has been a very substantial and widespread reactivation of independent explorers and producers as has not been witnessed for more than 15 years."

The rollback applies to only 15 percent of the total oil supply from both domestic production and imports. At the most, it could mean a 1 cent a gallon reduction on oil production.

Mr. ABOUREZK. Does the Senator mean the rollback provision in the conference report?

Mr. FANNIN. The rollback would apply to only 15 percent of the total oil supply from both domestic production and imports. That is right.

Mr. ABOUREZK. It really applies to——

Mr. FANNIN. Thirty-nine percent.

Mr. ABOUREZK. To domestic oil.

Mr. FANNIN. Fifteen percent of the total oil supply from both domestic production imports.

U.S. crude oil production declined steadily from 9,637,000 barrels daily in 1970 to 9,077,000 in September 1973, a decrease of 560,000 barrels per day. This trend has been reversed and preliminary figures indicate that production in January 1974, was approximately 9,200,000.

I think we are receiving, as a result of the increase in price, a return in the form of stripper well and new oil. We see results already. I know, from my investigation, this is so. I bring these facts to the Senator's attention because I think they are very important to this colloquy.

Mr. ABOUREZK. Mr. President I want to say one thing in conclusion of what I have been saying. If the oil companies, the major companies, which are now admitting, in their public statements and in their advertising, that to explore and drill for more oil and refine more oil they have to have a higher price, and thereby admitting that for a year they have been holding back production in order to hold for higher prices, if there is no other way for them to gouge us unless we have a crisis situation, and if they insist on doing what they are insisting on doing, and if they do not want to produce oil at an adequate profit, then what we ought to do as a U.S. Government is take over the reserves and produce it ourselves, because it is too essential and too important to leave it to the oil companies of this country.

Mr. HANSEN. Mr. President, will the Senator yield?

Mr. ABOUREZK. If I may complete my statement, I will yield to the Senator. As a matter of fact, I will yield the floor to the Senator in just a second.

I for one am not going to tell the people of my State that we are passing legislation in the Senate that essentially will freeze prices the way they are right now without an effort on the part of the Senate to roll them back. I am not going to tell my people that, because they are not going to stand for it, and I do not blame them. I am with them.

I will be glad to yield the floor to the Senator from Alaska.

Mr. HANSEN. Mr. President, I know people are frustrated. I know they are angry about prices. But I must say that to turn the oil industry over to the Government of the United States to operate would be the worst possible of all solutions. The Senator from Oklahoma, the Senator from Arizona, and I had the experience of touring the Middle East this year. We were in London. The British, you will recall, decided that private industry was doing the job poorly, so they nationalized a number of things. They nationalized transportation. Then they nationalized the coal mines. If Senators could have been with us flying into London and seeing how few lights were burning, and be in a hotel room where the hot water was turned off from 4 in the afternoon until 10 the next

morning, they might have second thoughts about the desirability of turning over to a bunch of politicians something as vital and as important to this country as oil is. I just have to say that, and I assume my friend from Alaska might be in accord with me. I do appreciate his courtesy in yielding to me.

Mr. GRAVEL. Mr. President, I would only add, it is not so much turning the oil industry over to politicians. It is the fact that it is impossible for us of good will, through the Executive or ourselves, to really plug all of the holes in the sieve. Our free enterprise system is a great one. I do not advocate the laissez faire system of the turn of the century vintage. There are places where the Government must come in and require accountability, but our system says I can make the choice; that it is not going to be the Government that is going to tell me how to live every step of my life. That is really what I have been fighting for. I have been privileged, because energy is an important part of my State, to become acquainted with some of the problems. I get thoroughly chagrined when I see good friends of mine continue to misunderstand the workings and the dynamism of what is going on in our system today.

I will hold on that, because I am prepared to speak at some length on it, but I see the Senator from Oklahoma may want to take the floor for a moment.

I would hope the Senator from Washington will be returning to the floor, because there are certain statements that he made that I think deserve amplification.

The first was the one he made about hoarding; that the major oil companies are hoarding tubular material. Well, hoarding means that someone takes it and pulls it off the market, hides it, and nobody uses it. That is the furthest thing from what is happening today. There is no hoarding going on. What is going on is a competitive system between the various companies, and if one has the money, it goes out and buys the tools that it needs. That is exactly what these big oil companies are doing, because they have the money to buy the material, and a lot of the independents do not have the capital to do that kind of speculation. So when we say the oil companies have tied up all the tubular goods, they have tied it up to use it.

I think the best example of that is to show that last year Exxon made profits of $2.4 billion. At the same time, Exxon spent $2.9 billion on exploration. That is $500 million more than they received in profits. This year their capital budget is $3.7 billion, and they do not know what their profits are going to be. All they know is that they have a job to do, and they are going to do it.

Mr. BARTLETT. The Senator mentioned the word "profit." In listening to the debate earlier, did the Senator not make the statement, or was he not in the process of making the statement, that the profits of the oil companies, based on a 10-year look at it, or a 10- or 20-year look at it, were lower than that of all manufacturers, even though in those profits of the big oil companies there were sizable profits from foreign operations at a time of cheap foreign oil, which was quite profitable, with low lifting cost, and that this was not necessarily the picture of the domestic oil industry?

Mr. GRAVEL. Quite the contrary. In fact, the great confusion—and I am sure it is not intentional—of many of our colleagues who talk

about the fantastic growth of profits is illustrated by the example of Exxon, which last year had an increase in profits of 16 percent domestically, while the increase in foreign operations was 83 percent.

Mr. BARTLETT. In the colloquy of a few minutes ago the price of wheat and the price of oil were discussed. It was mentioned that the price of oil in 1973 was at $3-something a barrel. I have forgotten the exact figure.

Mr. GRAVEL. In the beginning of the year, domestic oil was $3.40.

Mr. BARTLETT. Is it not correct that the price of oil in 1957, 17 years ago, was $3.09, and then the price went down and did not regain the $3.09 figure until 1969.

Then, is it not true that at that point the law was passed which decreased the depletion allowance from 27.5 percent to 22 percent, and that that added an additional expense to the oil industry of approximately $500 million, which is about 40 cents a barrel for oil. So, at that point, the price was far less than the $3.09 in dollars and cents of 1969. And, following that, in 1970 the price went up 9 cents a barrel and then in 1971 it went up 21 cents a barrel. It was then frozen on August 15, 1971.

What I am trying to say is that from 1957 until 1973, which was a period of 16 years, the price of oil had only the slightest of movement. And yet during that period—in fact, not even for the entire period but for the first 13 years of that period—the cost of labor went up 30 cents and the cost of steel then went up over 40 cents. And those are the largest expenses to the industry. The cost of drilling wells went up some 75 percent.

Mr. GRAVEL. Mr. President, I did not have that figure on the actual cost of drilling wells. What I had in this chart was the combination of figures on prices from Chase Manhattan and the amount of capital going in, and the price to the Bureau of Mines.

It is interesting, I think, that the Senator is using figures without extracting inflation. And we confront inflation when we talk about the increases that took place.

This is the way it looks when we have constant dollars. In this chart we have constant dollars. In 1957, the cost in constant dollars was about $2.80 a barrel. In 1970, in constant dollars, taking out inflation, the cost is about $2 a barrel. So, in point of fact, the cost of oil to the buying public has decreased in that period of time. Little wonder that if we take the amount of money invested in looking for oil and gas in this country from a chart that is in constant dollars, we find that we had a high point shortly after 1957 of a little over $7 billion, about $7.5 billion that went into exploration in the private sector. And in 1971 that came down to somewhere around $3.6 billion. This money was continuing to be spent for new production.

So we can see what is really happening and what caused the energy crisis. The point made by the Senator is a very valid point.

Mr. BARTLETT. Is it not also true that one of the results of the passage of that law was a virtual drought in the oil industry insofar as the domestic oil industry is concerned, that the number of independents decreased by 53 percent in the same period.

Mr. GRAVEL. The Senator is correct. Those were the little people who left the business. It was not the big companies. Exxon, Mobil, and

Texaco are still in business. The little guys were wiped out. That was the result of government action when we passed the law. We now propose to go in exactly the opposite direction. That is exactly what this conference report would do. It will go in exactly the opposite direction.

Mr. BARTLETT. The point was made earlier about a monopoly that is claimed for the oil industry. Is it not correct to say that the control or the impact of large companies in the drilling business is very minor? The 30 largest companies control only 21 percent of all the domestic wells drilled in this country. To compare the impact, as I think it was compared, of the steel industry, the computer industry, the aircraft industry, or whatever it is, a comparison of more or less, eight companies in those areas of specialization in industries which have a power, impact, control, or influence of 65 to 85 or 90 percent?

Mr. GRAVEL. That is the reason why I just cannot fathom the developments of recent months in what is probably one of the most competitive areas of our society. We seem bent on turning it into a military-industrial complex similar to aviation.

We are going to destroy the last vestiges of the free enterprise system because of the crisis, because the people of the country do not understand what has happened. And the leadership of the country has not been able to enlighten the people as to what has happened. Nor are the media of the country carrying their full responsibility in focusing on areas which really deserve it by getting the facts of the case to the people.

Mr. BARTLETT. I should like to ask the Senator from Alaska about the mandatory import program, which was discussed earlier. The mandatory import program was created in order to protect the domestic industry, and I certainly agree that we have to have a prop under it, so that it will have the ability to create national security and create a strong economy.

But is it not true that even though that was the intent of the mandatory import program in a domestic industry, to permit a certain amount of cheap foreign oil to come into the country, but not to the detriment of the domestic industry—is it not true that the mandatory import program was used to coerce the industry into increasing prices when costs went up? As costs went up 30 or 40 percent for steel and labor, and 75 percent for drilling a well, there was not the opportunity to justify the increased costs or to have those costs passed on.

Instead, the managing of the program during different administrations created a tendency to cause prices to go up. Then foreign oil was permitted to come in in larger and larger amounts.

The major companies, and even the independents, said, in effect, that if that went on too far and too long, so that domestic industry was weakened, then we would see, instead of plentiful, cheap foreign oil, a very short supply of expensive foreign oil.

Was the mandatory import program designed to protect the domestic industry, or actually was it to weaken it in the full hope of having cheaper and cheaper foreign oil?

Mr. GRAVEL. Exactly. It was done with knowledge and forethought, I believe, in the 1950's and 1960's, so that what we call cheap foreign oil—and there was a place in the world that had cheap oil, and it was

the Middle East—could be imported, and the American people became accustomed to it.

It was done so that the American people could have cheap energy. That is what happened. We went on a binge. We went on a drunk. We had cheap energy for a while, and we glutted ourselves to the point that we destroyed elements of the industry. We have skewed other parts of the industry so that they cannot be recognized.

Take the natural gas company in Chicago, which sells natural gas cheaper than the British thermal unit cost of the oil. We realize a sense of disaster that has been brought on the country. Now the chickens are coming home to roost. They are coming home to roost because the Arabs, when they are in a command position, have just raised the price of oil.

We have all the figures. We did not make the price of oil like this; it was the Arab nations that did it.

Mr. BARTLETT. I recall the Senator from Washington said he voted against, or opposed, whichever was the case, the mandatory import program. But it seems to me that that position in opposition to the import program as it was designed was an opposition against an effort designed to strengthen the domestic industry.

Mr. GRAVEL. Exactly.

Mr. BARTLETT. But that in our quest for the cheaper and cheaper oil, finally it seemed to hit a high point in 1970, I believe, when the AREEDA Committee was appointed by President Nixon, and the report of that committee to the Cabinet level committee was that the mandatory import system should be completely dismantled, and they estimated that the price of oil would then go to $2 a barrel, and the estimates were made that the price would stay and be stabilized at $2 a barrel, for the simple reason that there was so much foreign oil that there would not be the opportunity to make political judgments by the Arab nations, and have an embargo or have a cartel setting the price, but that the argument was made, am I not correct, during that period that this would come about at such time as our reliance on foreign oil had increased to the extent that we would not be self-sufficient and could not take care of ourselves, and that at that time the price would rise and the amounts available would drop, so that we would be blackmailed, or at least the attempt would be made to blackmail this country and change its foreign policy, and that all this would result from the weakened condition of the domestic oil industry, because people wanted cheaper and cheaper oil.

Mr. GRAVEL. I call to the attention of my colleague from Oklahoma a speech that was made on this very floor 15 years ago, saying exactly the same thing, containing the statement the Senator has made, that the market would control, that we would have cheap oil until they get control, and then there is no more cheap oil, and dire consequences would ensue; and I think that is the situation today.

Mr. BARTLETT. If the Senator will yield, he urged an interesting comparison that can be made with the price of wheat. My State is a large wheat producer as well as a producer of oil and gas and other energy. It would seem to me that we had a chance to observe the price of wheat, and that in order to produce the larger amounts required by the world market, it was necessary for the market price to go up, in

order to do the fertilizing and increase rather drastically the production, because up to the point of the large wheat sale to Russia, we had surpluses for a long time; but that if, however, this kind of a proposal would make sense to bring about lower prices and higher productivity, it would make sense in the case of wheat.

I say heaven forbid, because I think we have seen from the baling wire shortages, fertilizer shortages, steel shortages, and all the other shortages we have a chance to experience, including propane, that higher prices in the free market, set by thousands of purchasers, are prices that will do several things to bring on more production of a commodity, or, in the case of energy, to bring out alternate sources of energy; and, in addition, it works to dampen the demand.

Mr. GRAVEL. I think that is what we are talking about, because I for one rest my case on the argument of free enterprise and the movement of capital. Because we do not have what we consider a real free enterprise system domestically or internationally, we then must have a free enterprise system that has some government involvement. When we talk about the cheap energy of the sixties of early seventies, that is a free market. Then all of a sudden when the Arabs have control of the market, having driven out the competitors, they have a monopolistic situation, and jack it up. In order to assure continuity of the situation, we must, therefore, have government involvement.

I think that is where many of us go askew philosophically.

We had the "cheaper gas" problem given to our Committee on Finance, where the instigation of our energy problem was tracked back to this regulation of gas in 1954. It was interesting to see the machinations that took place in the marketplace as a result of that first intrusion by government into the domestic situation.

I think we can arrive at, within certain boundaries, a very competitive situation within the Nation, and then, when we go abroad, we have to look at a different type of problem. But essentially our problem is one of capital.

When I made the comparison with wheat, I was trying to get across to my colleague that we have problems with inflation in all parts of our society, and that, to my mind, that inflation is caused primarily by a lack of understanding of what has to be done in our economy. That is the reason why many of our colleagues stand here and say, "We are going to roll back the price of oil."

You cannot roll back the price of oil, and you cannot roll back the price of wheat. You must pay what it costs. If you try to avoid the cost, you skew and distort the system, and then you have to distort it again and again and again.

So I advocate fighting inflation, and hope that it might sell here in Congress, so that we can try to return to some fundamentals of this business.

What we are talking about, when we say we are going to roll back the price of oil [Sec. 110] is not going to decrease inflation; it will actually cause inflation. The price of oil will be higher by the month of July, if this legislation passes, for the very simple reason that we cannot put a gun to everyone's head; and what investor in these United States of America is going to take his money and invest it in oil in this country, if his investment can only return a price of $5 a barrel, when he can go to Canada and sell his product for $10?

There is no one in his right mind who will take his money and do that with it, and there is no way to pass a law to take money away from the people and force them to make the investment, unless we make this a socialistic country.

My colleague from Wyoming remarked that we may see the Government go into the oil business. That has happened in the last few months. It is happening at Elk Hills, and it is happening in Alaska, where the Navy sits on the national reserves that the people have in oil. The Navy is sitting on that oil, and if we developed that oil, it would depress the market. Likewise, it would cause the inflationary prices in energy to subside; and do not blame the oil industry for that one. Blame the Navy and the Members of Congress who insist on keeping that 33 billion barrels of oil in the hands of the Government.

I would be happy to continue the dialog with my colleague, because I find him very expert in these areas.

Mr. BARTLETT. I would like to ask the Senator from Alaska, if he will yield a little further, he mentioned, I think, the Brookings report. The Brookings report gives a very valid explanation as to how the control on the price of gas, starting in 1954, led to the present shortage of gas.

Mr. GRAVEL. And oil.

Mr. BARTLETT. That is what I was going to add. Because the point that the Senator made earlier about gas being underpriced on a Btu basis as much as one-tenth, but at least a third compared to oil, and because of its attractiveness as an environmentally acceptable fuel, that it did keep the price of oil and coal down; and also the mandatory import program and the manner in which it was administered was the depletion allowance plus the effort to do away with the mandatory import program in 1970, so that the price of oil has also been controlled both directly and indirectly, which has followed the same pattern.

Mr. GRAVEL. This report is actually humorous in that regard. It has a section in it which tells the utility companies, through the President, to convert such utilities from gas to coal. So if we are telling them to raise the price of electricity, we are playing a shell game. The Government on the one hand says, "Gas is cheap at 30 cents, therefore you utility companies are supposed to do the job for your consumers, to buy gas because it is cheaper than oil." Now we get to another arm of Government around and saying, "Don't you buy that cheap gas. You have got to buy the more expensive coal."

Would it not be better if we turned around and deregulated gas and let the people choose freely on a priority basis from the best energy available?

Mr. BARTLETT. It seems to me there is confusion about what this proposal would do. **[Sec. 110.]** From my understanding of it, it would roll back only that part of the domestic price structure that represents about 19 percent of total consumption—around 29 percent of total production. But it does not affect approximately one-third of the oil we consume, which consists of some 5 million plus barrels of imports. This price is not controlled in any way by this country but is a cartel-set price by the OPEC nations and others.

Mr. GRAVEL. What figures is the Senator using?

Mr. BARTLETT. The figures I used are about 19 percent and 20 percent.

Mr. GRAVEL. Could I help my colleague there, as I have some recent figures from the——

Mr. BARTLETT. That is on consumption not on production—29 percent on production and only 19 percent or 20 percent on consumption.

Mr. GRAVEL. The figures I have here are the total amount of foreign and domestic crude oil and foreign products. So often I used to follow that pattern; but in Connecticut, Massachusetts, New York, when they cannot find any oil, they go to Germany and buy some. So we have to look at the total picture. The total picture on crude oil and refined products is, imported 37.8 percent. This is totally unregulated.

Mr. BARTLETT. Right.

Mr. GRAVEL. Almost 40 percent will be unregulated. So what will happen is, we are going to cause a scarcity because people will not drill. That will create more scarcity at home in order to buy more abroad. It will place a greater burden on the balance of the resources of the world.

Mr. BARTLETT. Where will the larger companies that might prospect to a greater extent in this country do their drilling? Will they not go after higher prices in other countries?

Mr. GRAVEL. The majors are already abroad in their integrated status, so let us not talk about the majors. I do not know of any independent in his right mind who would drill in this country under those circumstances. Why would a person go to a bank to borrow $100,000, or take $1 million in borrowed money from the bank and drill in Oklahoma or Texas or in Alaska, when he can go to Canada and drill, or go to Indochina or to Saudi Arabia or to Libya, or any other place that will let him in—the North Sea—if he can find oil and sell it for $10 a barrel? His banker would never lend him the money in the first place. People will go where they can get a return on their money. If we make money noncompetitive—which is exactly what this bill would do—we will create additional domestic scarcity. Prices will go up abroad and therefore we will cause more inflation plus—we have not even touched on this, and I know my colleague is aware of how serious it is—jeopardizing the outflow of dollars. When we begin to buy oil abroad at $10, $15, $20 a barrel, the amount of dollars that will go abroad—at a time when our own oil companies are being nationalized abroad so that they will not be able to bring back any more profits—there will be no more contributions to our balance of payments, and we will have an accelerated "double whammy" on our trading position. This is much more serious than the average crisis—very much more so.

Mr. BARTLETT. I believe that the current estimate of our foreign balance-of-payments deficit amounts to about $20 billion—that is, at the current volume and current prices. They could both increase, and we would like an increase in volume, if we could, of course. The price, we hope, will come down. But at this level of expenditure, I think it is safe to say that we cannot afford it without serious erosion——

Mr. GRAVEL. My colleague is talking a little bit like the Senator from Washington (Mr. Jackson) when he says he hopes the price will come down. He hopes that Canadians will roll back the price of oil and that the Arabs will roll back the price of their oil. Since when do people don't have a desire to make money?

Mr. BARTLETT. That is a very good point, but the point I was going to make is that currently it is $20 billion and that is an amount we cannot afford. Also, to get back to——

Mr. GRAVEL. That is $20 billion in purchases abroad?

Mr. BARTLETT. Yes.

Mr. GRAVEL. Right. The figures I have, if I could amplify on them, indicate that last year, when we were debating the Alaska pipeline, the best projections were that by the mid-1980's—1985—we would have a net—not just purchases—but a net outflow of $30 billion. That is the key thing. In order to keep up our balance we not only have to produce oil in Oklahoma, but we had better also produce a lot of wheat. We know the only way right now that we will get by is in the quantity of dollars we send abroad to buy oil. That was last year's projection. This year, the best projection we could put together is that by 1980 we will have a deficit—net outflow—of $30 billion a year.

From the end of the Second World War until last year—roughly 30 years—we pushed abroad, with the war costs, with foreign aid, and so forth, between $80 million and $100 billion dollars. That of course, is one of the things that triggered the devaluation we experienced in 1971 and again in 1973. What we are talking about, if we continue with this, from our dependency on oil, whether to Venezuela, Canada, Saudi Arabia, Great Britain, Norway, or wherever—if we try to push that many dollars abroad, we are going to go bankrupt. Our monetary system will fail. That means unemployment and poverty on the grandest scale possible.

Mr. BARTLETT. My figures are a little bit different from yours. They show a $20 billion balance of trade deficit currently being spent in purchases of oil. If we add 2 million barrels per day, which we would like to do, and which at the present time we cannot do, we would be approaching something like $27½ billion in balance of trade deficits. If we really accept the challenge, there is no chance we can have as much energy as we want, because we cannot afford the amounts we would like to bring in. We are going to have to suffer larger and larger shortages.

If I might carry this one point further, I would like to mention that, as I understand it, this price rollback—the fixed price rollback provision **[Sec. 110]** in the bill—applies only to about 19 percent of our consumption, about one-fifth of the total consumption of crude oil and oil products in this country; that the average price of new oil, matching and new oil itself, and stripped oil, as of about 2 weeks ago, was $9.51; that the price of imported oil at that time, although it ranged up to $22, was priced, on an average, about $10.40; that the price of domestic oil was $5.25; that the price of all domestic oil was $5.95.

The point I am trying to make is that the price of oil that would be rolled back and the price of oil that is now providing the incentive is just 19 percent of the total consumption; further, that if this rollback is accomplished to $5.25—and I think if it is accomplished to that point, because it is written into law with a small limit of 35 percent that can be increased, it is going to stay there—and all the savings to the consumer are realized by the consumer, he will only benefit to the amount of 1.4 cents a gallon. I think that somehow the consumer feels that there is going to be a large saving involved, but I do not believe this is the case.

Mr. GRAVEL. I am grateful to my colleague for making that point. That is probably the best point of the day.

The hoax that is being perpetrated upon the public is that they are going to get something for nothing. Even this bill, which is trying to do that, cannot do that because of the economics in question.

Mr. FANNIN. Mr. President, last Monday, the Washington Post published a most enlightening editorial on oil prices and controls. While I do not agree with the idea of a ceiling on any oil price, or a price ceiling on any other commodity, for that matter, I certainly do agree with the Post editorial that—

Both the petroleum industry and the government often speak as though, except for offshore drilling, our domestic production has a rigid physical limit and is now irrevocably declining. In fact, the amount of oil drawn from a well depends on the price for which that oil can be sold. If the oil is forced up the well by the pressure of gas or water trapped underground, producing it is comparatively cheap. But in time the pressure will fall, and then recovery begins to get expensive. At that point it becomes necessary to pump the oil up. In time, again, the pump no longer reaches the oil. Then recovery becomes still more expensive, and perhaps the producer has to pump water or gas down to force the oil up. Or perhaps he just closes the well as exhausted. In this country wells have typically been shut down with two-thirds of the oil still in the reserve that it has tapped. But at present prices it will become profitable to get many of these wells back into production. It will also be worth sinking wells deeper in the old fields.

One of the best examples I know of is an old field in west Texas that has been rejuvenated and it now producing almost twice as much oil per day—127,000 barrels—as it did at its peak production 30 years ago.

Not only has production been doubled but ultimate recovery of oil in the formation is now estimated at about 45 percent rather than 41 percent when the new recovery effort was begun and the national average of some 32 percent.

As Jim C. Langdon, chairman of the Texas Railroad Commission and an authority on secondary and tertiary recovery methods said recently:

The state's known reservoirs contain at least 98 million barrels of presently unrecoverable oil, part of about 300 billion barrels in the same category in the U.S. as a whole.

In my judgment, at a cost not exceeding the cost of extracting an equivalent amount of energy from tar sands, shale oil, gasification or liquefaction of coal, nuclear power, or the importation of natural gas . . . an additional 10 percent of our 'unrecoverable' crude oil could be produced.

This would permit the nation to almost double its present recoverable reserves or expressed in other terms, would be equivalent to the discovery of three new North Slope Alaskan oilfields.

Mr. President, I think this is very significant, because it indicates the vast amount of oil that can be recovered if we give our domestic industry a chance to go forward with their work at a decent price level, and not restrict them to the point that they will not be in a position to make the development being discussed.

Mr. President, we should realize what is being done when we start talking about rolling back prices. **[Sec. 110.]** The oil industry has been going forward very rapidly since it was given the opportunity to sell oil at a price the market would stand, which is still lower than the prices of oil that is being imported.

When we are talking about domestic oil we are talking about jobs in this country; we are talking about taxes being paid in this country; we are talking about keeping industries going that are vital to the economy of the country.

Why should we pay a higher price for foreign oil? For every barrel of oil that is not produced in this country, to take care of our needs we must import a barrel of oil from a foreign country at a premium price. Even then, we do not know whether we can get that additional

barrel beyond the ones that could be produced domestically. It is certainly a fallacy to say that we should roll back these prices to a point where it will not be profitable for us to produce the oil that is available in this country.

We are talking about approximately 350,000 stripper wells now producing in this country, 84,000 of them in Texas alone. The Texas Railroad Commission further brought out that those 84,000 stripper wells produce 3.8 barrels a day, involving deposits of 1,800 million barrels of oil.

So it just seems ludicrous that we could even think about rolling back prices that would curb production of this oil.

Mr. HANSEN. Mr. President, I appreciate very much the observations just made by the distinguished Senator from Arizona. What we need to understand is how the laws of economics do work. I am certain that if we have been listening, as I hope we have, to the Senator from Arizona he has pointed out very graphically exactly what does happen in the free enterprise system as the prospect for profit increases, because I think I have materials which supplement and corroborate what he has said.

Mr. President, in theTexas Slaughter field the output has soared as infill drilling has taken place. It is expensive. The only reason the added interest and activity in that field occurred is that it becomes a profitable operation due to these things that are taking place. Secondary and tertiary efforts are being implemented. The field is being drilled more intensively than before because it is profitable to do that.

Mr. President, I know we do not have much time left between now and tomorrow at 4 p.m., at which time a final vote will be taken, but I hope very much that before that hour arrives most of us will have taken the time to consider what the facts are to try to make up our minds as to what will be best for America in the long run, and not try to demagogue an issue that already has had too much of that done. It is easy to get up and inveigh against high prices for gas and oil. We tend to forget that in the United States we have had bargain basement prices for oil and gas for many years. This was mostly because we have had an industry that was active and alert to the problems in this country. It has been true also, that through the tax treatment, through the depletion allowance, and other publicly passed laws we have subsidized the consumer in America. By not taking as much as we have from the oil companies we have had lower prices than anywhere else in the world.

I have seen a comparison for 1973 with respect to the price of gasoline in the United States. It was roughly half of what it was in England, one-third of what it was in Germany, and it was exceeded by nearly six times when customers in Spain bought gas and oil. There is not a place in the world that approximates our price. We have had dramatic increases in price and I know how concerned everyone is. But when we take cognizance of the fact that we are talking in this bill [Sec. 110] only about the domestic production in the United States and

think we are going to bring prosperity and happiness to all the people by trying to roll back domestic prices, we fail to recognize that we are playing into the hands of exporting nations around the world who find it incredible that the United States in a time of stress, and this is a time of stress, would take steps to curtail its own production so as to make us even more dependent on foreign sources.

We complain already about the big stick the Arabs have been using through the boycott, and bend our policy with regard to the Middle East. If we want to make certain that that club becomes larger than it is now, all we have to do is pass this bill because if we decrease our domestic production we will increase our dependence on foreign sources of supply. This is not the time to demagog an issue as vital as this.

Nearly 80 percent of all the energy we use in this country comes from oil and gas. I know the distinguished chairman of the Committee on Interior and Insular Affairs spoke about the 250,000 people who were out of jobs. I am as concerned as he is. He proposes in his bill to roll back prices and by Federal participation in unemployment compensation benefits to help people out for a longer period of time after the State unemployment rights have expired. **[Sec. 116.]**

I think a far better and more realistic position to take is to recognize that ours is an energy-intensive country. We do depend on jobs in this country. For every man-hour that is discharged in raising the food and fiber that makes Americans the best fed and the best clothed of all the people in the world, for each hour we work on our farms we bought 1.2 gallons of diesel fuel or gasoline.

Mr. President, if you want to bring about poverty in rural America you do not have to do anything more about farm production; just shut off the petroleum.

I was in California at Christmastime. At that time the State Unemployment Compensation Board of California estimated that there were then 32,000 people out of jobs in California alone because of the fuel shortage. If we are concerned about the 250,000 people out of jobs now I can assure Senators that if this bill passes, then before this year is up we will be concerned about several times that many people out of jobs, because this country runs on energy. There is no substitute for it in the short run. We have great reserves in this country and we have other alternatives of energy that can be put to use. We talk about coal gasification and liquefaction. It is estimated we have recoverable oil shale deposits in the tri-State area of Utah, Colorado, and Wyoming for 1.8 trillion barrels of oil.

Mr. GRAVEL. How can we develop that oil shale or bring about the gasification of coal if we are limited by the price of oil? Oil shale cannot be developed for $7 a barrel, I do not care what they are saying. Some were saying that figures last year showed an 8.8 percent increase in inflation. How can we pass a law saying the price shall be no more than $8 a barrel.

Mr. HANSEN. In response to the Senator's question, there is no way. If we want to make certain that we do nothing about developing these other important sources of energy, which include uranium and geo-

thermal steam, all we have to do is pass this bill, because it works this way.

Mr. GRAVEL. And solar.

Mr. HANSEN. And solar. These alternative sources of energy become feasible. A lot of the technology has been done. The University of Wyoming has been doing a lot of work on oil shale technology. They have retorted it. When the temperature is raised to 900 degrees the kerogen in the oil shale turns into shale oil. A few years ago it cost about $7 a barrel before that operation would become operable. Now, as the Senator from Alaska has pointed out, with inflation, the cost is above that.

So none of these things are going to happen until they become economically possible. People will put money into programs that have a reasonable expectation of being profitable. We know that even though we are short of energy, there are not many people trying to dig a coal mine or oil well by themselves unless they have a fair prospect of getting a fair return on their investment. That is precisely the point made by the distinguished Senator from Alaska. That point has been eloquently made by the Senator from Arizona. It is a fact that the American people ought to keep in mind.

Unless we decide, as some would have us believe, that socialism and the Federal Government's entry into private business is a better way to operate than the way we have historically operated in the United States, I say there is no place for this bill. If we want to do what England has done, if we are satisfied to have miners work a couple of days a week, or none at all, in order to prove their point with the Government, where the coal industry is nationalized, if we are willing to put up with cold houses, very little energy, with people out of work, which brings us to a situation as desperate as it was in early World War II days, that should be our choice.

But I hope we do not get into this legislation tomorrow. I hope we do not proceed to a final vote on that issue, under any illusions as to what the facts are. They are clear. They have been spelled out by people in Government. They have been spelled out by people in industry. They have been spelled out by the academic community. The record is replete with testimony that these decisions are made on the basis of return on investment, and the record of the industry itself has disclosed that same thing.

It was reported earlier today that drilling activity in 1957 was double what it was in 1972. There were more than 20,000 independent oilmen working in this country in 1957. By 1972 there were about half that many. The reason for that was that there were better ways of making money than to go out and invest money in the increasingly costly search for oil. It costs more money to drill wells than previously. Wells have to be dug deeper than before.

The thing that has turned the situation about and made our production start to climb, though it be ever so slightly, has been the fact that the prospect for a profit has encouraged people to invest their money into this business. We need more oil, not less, in America, in order that Americans may work tomorrow.

Mr. GRAVEL. Mr. President, I want to underscore one point that my colleague made, and that is the item of inflation. I am terribly chagrined to see good friends of mine make the argument that we cannot do what we are doing, that we have to roll back the price of oil [Sec. 110], because the present price is so hard on poor people. Let me say that everything is hard on poor people, because they are poor. We cannot solve the problems of poor people by this energy bill. If we do, we are going to spew more problems on our society. What we are going to do is cause a flight of capital, which means productive capacity, which means jobs. That is the tragedy behind the legislation. There are a lot of well-meaning and sincere people who support this effort, who think that they are doing the right thing. But, in point of fact, they are doing exactly the opposite of what they think they are doing.

Mr. HANSEN. Mr. President, if the Senator from Alaska will yield, I want to say that I agree with his comments. A poor person with a job is better off than a poor person out of work, who does not have to buy gas, because he has nowhere to go. If he is out of work, he is not going anywhere. So the one thing that is worse than having a high price on gasoline is having no gasoline. If we want to bring about real trouble, all we have to do, being as gas oriented as we are, is simply decrease that supply. If we do that, I can assure Senators we will have trouble, as the Senator from Alaska knows so well.

Mr. GRAVEL. I thank my colleague.

One point made by the Senator from Washington was that production in 1973 was constant, or that there was no appreciable increase in production as a result of increased prices. Prices did not begin to move substantially until September of this last year, so obviously, with the lead time in question, there is no question that the marketplace could not act sufficiently rapidly to bring about a substantial increase in productivity. But what productivity did take place was offset by the fact that a number of wells were expiring, wells that were no longer able to produce.

Let me in closing, before I address a few questions to my friend from Arizona, say what I think is the fundamental argument of the whole energy crisis. It is: First, that the need for oil, oil and gas, is only the short-run part of the problem. We are talking about our ability to do something about the next 10 to 15 years. After that will come a more serious problem. Then, by the year 2000, if we as a society have not made a breakthrough on new energy sources, we will see the planet disintegrate from the effects of pollution.

The reason why we are responding in oil today is in recognition of the fact that it is a technology readily at hand, and it is something our society is geared to. It is something we can do something about and show results in 4 months, 12 months, 18 months, 2 years, 5 years. In fact, in 5 years we could be out of the woods. I do not say we will be self-sufficient, but we would be out of the woods. But there would have to an alternate source of energy, whether it be nuclear energy, solar energy, you name it. That is where the real problem lies. But in the short run, if we do not address this problem, we are going to make severe mistakes. One is the simple problem that we are not putting moneys from Government's side in the responsible area, be it R. & D.

or prototypes. We are not nearly addressing ourselves to the problem.

In the private sector, the problem is one of capital. We can cut out the depletion allowance, we can cut out all of the taxes; we will have nobody drilling for oil; we are going to be out of all the incentives. It works out that way. Incentives depress price and bring about production. Essentially, that is the situation we have in this country with depletion allowance and others. But if we go to taxation, we depress consumption, but we also do nothing at all about increasing production, which is the way to solve the problem.

Then when we go to rationing, we make it worse. What we do is apportion the burden, but provide no solution to the problem of what has caused the burden. In other words, we are treating only the symptoms; we are not treating the illness.

If we go to a free market, that is, if we deregulate gas, deregulate oil, what we do is permit oil to rise to a level where it clears itself on the market and we move from a period of scarcity which increased prices. That is what we have in this country, scarcity occasioned by the lack of capital over the last 10 or 15 years to do the job domestically.

So if we do away with scarcity, in point of fact what happens is that we turn around and actually decrease price. We decrease price through abundance.

I will read from a statement which I think touches exactly upon what we are doing today. I will read from the statement of Prof. Edward J. Mitchell, professor of the University of Michigan. Here is an oil expert, a person who is not in the pay of the oil companies. Here is a person who does not even live in an oil State. This is what he has to say:

> To create a shortage, you simply depress the market price below the level that equates supply and demand; to eliminate the shortage, you free the price and allow it to rise to equate supply and demand once more. To create a surplus, you raise the price above the market-clearing level; and to eliminate the surplus, you let it fall back. We always have three options: a market-clearing price; a price that gives us shortages; a price that gives us surpluses. Our representatives in Washington are presently opting for energy shortages. If we are all decided in retrospect that this was a bad choice, we have the means to change it.

That is exactly what this legislation will do. It will create a shortage and will increase the inflation in this country and bring about an increase in price.

We need to increase the price at the well so the people will be able to buy wells and pay the price for gas stations and everything else.

We have two ways of doing this. We can get it from price, and that is pay as you go, which is the least inflationary approach. Then the consumer pays.

And if we do not want to do it that way, we can get it in the same way that the Soviet Union and other countries do. We can get it from taxation. We can tax the people and pay for the refineries with the money. The taxpayer pays it, because he is also the consumer. All we have to do is to pick the system that we want to solve the problem with.

In closing, I would briefly like to ask my friend, the Senator from Arizona, something that is very important to me and something that I have been laboring to have changed.

I notice that in the energy bill that we are dealing with, there is a section entitled "Federal Actions To Increase Available Domestic Petroleum Supply."

I do not have any knowledge of this. However, I do know where we can double in 1 day's time, if Congress were to act intelligently on this subject, the reserves of this country. And I am not talking about Elk Hills and I am not talking about the sands of Colorado. I am talking about Pet 4, which is in Alaska.

The military tells us this, and not the oil companies. I have talked with the oil companies, and they are fairly pessimistic about it. However, the Navy tells us that there is somewhere between 33 billion barrels of oil and 100 billion barrels of oil, to say nothing about gas. With the Alaskan pipeline we could begin in 3 years to bring that oil to our country.

I would like to know what debate ensued in the conference that caused this title, the Federal actions to increase available domestic petroleum supplies, to be added, to the categorical exclusion of these petroleum reserves.

There is a dichotomy that I cannot reconcile with the public interest. I would like to know why that is not released to the American people.

Mr. FANNIN. Mr. President, I would like to say to the Senator from Alaska that it was stated that this would be handled separately. However, I do not anticipate that action, since it was, as the Senator knows, removed from the legislation. At one time it was included, but disposition of petroleum reserves 1, 2, 3, or 4 was removed from consideration with the understanding that it would be taken up at another time.

Mr. GRAVEL. It is my understanding, based on an authorization by Congress to fund the Navy for $150 million over the next 10 years to do oil exploration at Pet 4, that we have already made a decision to do that.

Mr. FANNIN. I understand that the cost of these measures is continuing. I cannot give the Senator complete information, because I think the Armed Services Committee and other committees are involved in addition to the Department of the Interior.

Mr. GRAVEL. Mr. President, I testified before the Armed Services Committee to try to get them away from what I think is folly. I understand the Department of Defense has now changed its position and is prepared to turn this over to the Department of the Interior. I hope that my friend would use his influence to investigate that matter and maybe inform the American people in that regard.

This is what is at stake. The argument is used that the Navy needs Pet 4 in the event of emergency. I cannot conceive of any emergency more serious than we have today, the embargo on any shipments or sales of oil to the American Government. It is an emergency in NATO, our tanks in NATO and our fleet in the Mediterranean. They cannot buy Arabian oil. That means that if France or Germany makes a deal with the Arabs, as long as King Faisal says that they cannot sell it to the Navy, they cannot sell it.

We have seen Aramco placed in that situation. Members of this body charged that these companies were lacking in patriotism. If I had been

a stockholder and holding any stock in a company having control of Aramco, I would have said that it was impossible for the president of Aramco to stand up to King Faisal, because he could have thrown him out the next day. It would have been false patriotism to my mind.

The point I am making is what would the Air Force or the Navy have done since last October with the embargo? What have the armed services of this country done? We have taken oil from the west coast, from the civilians. We have taken oil from the east coast and taken it away from civilians. And they have used it to man the vessels and the planes.

We have done this under the name of the National Defense Act. That is not bad, because they do have to have first priority.

What I cannot understand is that in a time of emergency, the Navy and the Air Force take it away from the total inventory. Where do they get the notion that they have to hang on to the petroleum reserves in Alaska and in other parts of the country when it is not usable by them? They should let it go to inventory and then let them take it off the top if they need it.

If they do not need the Pet 4 or the reserves elsewhere, they could then be sold to the oil companies. They could then turn around and buy refined products.

It is ridiculous that people talk about conspiracies to hold back large quantities of oil.

The only place that I know that that occurs is in Pet 4 in Alaska, where I know that there are large quantities of oil. That oil belongs to the American people. And the American people cannot get it, because of the myopic vision of some leaders in the Department of Defense, in the Navy. And incidentally that is also true with respect to some Members of the Congress, who sustain the hoarding of oil and keeping it from the people.

I do not think this is in the national interest. And I hope that with that realization by the American people that some people are hoarding oil, something will be done about it.

I do not buy the argument made about Teapot Dome and all of that. We have had scandals in our history: Teapot Dome was one of them. But turning the oil over to the Navy, because of Teapot Dome does not make any more sense to me than asking an admiral to be Vice President of the United States, because we had a bit of a scandal in the Vice Presidency. It does not make any sense there, and it does not make any sense with respect to Pet 4.

We have a department of the Government that leases billions of acres of ground, and has for the last 50 years, and there is no reason to be depriving our industry of power, because we are afraid to do what is right and what is in the public interest. We have billions of barrels of American oil that our people could use today if they could get the Government to stop hoarding it. Mr. President, the conspiracy, if there is one, lies within the bowels of the Government.

Mr. President, I do not seek comment on the part of my colleague from Arizona. I hope, however, that the American public will demand that something be done in the near future.

SENATE DEBATE AND PASSAGE OF SECOND CONFERENCE REPORT, FEBRUARY 19, 1974

Energy Emergency Act—Conference Report

The Senate continued with the consideration of the report of the committee of conference on the disagreeing votes of the two Houses to the bill (S. 2589) to authorize and direct the President and State and local governments to develop contingency plans for reducing petroleum consumption, and asserting the continuation of vital public services in the event of emergency fuel shortages or severe dislocations in the Nation's fuel distribution system, and for other purposes.

Mr. Fannin. Mr. President, we will soon be voting once again on still another version of the conference report on S. 2589, the Energy Emergency Act. This most recent version of S. 2589 contains nearly all of the infirmities of the older conference report plus additional infirmities.

If you desire to help perpetuate the energy crisis and with it unemployment, a decline in the gross national product, and predictably related outcomes, I would urge you to vote against recommittal and for passage.

On the other hand, if you want to help overcome the fuels shortage, increase domestic supplies, decrease U.S. dependence on costly and insecure foreign oil imports, keep American businesses operating and the labor force employed, you could help make it happen by voting for recommittal and against passage.

The time has come to end congressional demagoguery regarding the energy crisis and to start voting for measures to increase energy supplies.

Arizona has no oil production. Arizonans need to look to out-of-State sources for their oil and gas needs. In order to help them, rather than hurt them, meet their energy needs, I am voting for recommittal.

Mr. President, there are many reasons why I feel that it would be a great mistake to vote for this conference report.

Let me refer to some of the testimony given during the hearings held recently, on February 13 and 14, before the Committee on Finance.

Mr. C. John Miller, president of the Independent Producers Association of America, made the following statement with reference to the impact on gasoline prices:

> The answer is so near nothing that it would be less than a cent a gallon. We have made calculations on the basis of rolling it back to the $5.25 Senator Jackson's bill proposed and then the President had to come to the Congress, I believe, and try to go back to the $7.09. Now that rollback would equate to about $4.26 a barrel on roughly 2½ million barrels, and mixing that across the entire stream of use of about 18 million barrels a day I think we will come out to something in the general range of a cent a gallon.

In further testimony, on the question of the impact on operations and future supply, Mr. Miller had this to say:

Less domestic crude oil would be the inevitable result of a price rollback because the independents would not be able to finance the greatly increased exploration activity which is required if we are to attain an acceptable level of energy self-sufficiency.

In fact, a price rollback hurts the independent producer to a far greater degree than the major oil company. This is so because independents drill 80 percent of the stripper wells.

With respect to the question of the impact on operations and future supply, Mr. A. V. Jones, Jr., president of the National Stripper Well Association, had this comment:

We have experienced since the prices have gone up recently a dramatic increase in every service that we use. Our service and supply people were discounting that $10 oil, they said it is going to be here. If we get a rollback in that oil it is going to shut the thing down just as quick as it turned it on.

Mr. C. John Miller, president of the Independent Producers Association of America, had this to say on the same subject:

We had a rig count up to 1,440 during the month of December and it is now softened to 1,350, and this indecision, this continual sniping that is coming into the industry is making many of the people reconsider the plans that they had made; and we can cite instances, specifics across the country in every oil-producing area operators have come back into business, where they have leased lands, started to rework old wells and putting together new drilling rigs, and these things will come to a screeching halt if we have this roll-back, not out of spite, but out of the fact there will not be the dollars to do the job.

Again, on the question of the incentives under the present price structure, Mr. A. V. Jones, Jr., president of the National Stripper Well Association, stated:

There is a lot of oil, as I say in my statement, I am saying tens of thousands and possibly as high as 50 to 100 thousands of these wells that have just been abandoned in the country because they weren't economical. We can bring this type of oil on immediately, and this oil would be available to us at a price lower than the world price is at this time. That is one thing we would like to see possibly in this bill that exempted the stripper well. We think these service wells that are involved in the water flood exploration and everything should be included as part of the well. They are costly to maintain, and should serve as much as the producing well in establishing a stripper well.

Those are just a few illustrations of what is involved as far as a price rollback is concerned.

Mr. President, I reserve the remainder of my time.

Mr. JACKSON. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be taken out of both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GOLDWATER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GOLDWATER. Mr. President, like most of us I spent the past 8 or 9 days in my home State, traveling around the State and trying to sense what is on the minds of the people of Arizona.

Mr. President, we have a unique State. It is the second fastest growing State in the Nation in population, and because of that and because of what I consider to be bad judgment on the part of the energy people

back here, the southern part of my State is in very bad condition relative to fuel, while the northern part of the State, which is a heavily tourist occupied section in the summer, is not having any particular trouble at all.

Mr. President, we have grown about 14 percent since 1971, and yet the energy people have based our allocations on 1971, and have allowed us 83 percent of that period. This is not sufficient, and in spite of the excellent work done by my colleague from Arizona (Mr. Fannin) in Congress, and by the Governor, we do not seem to be getting anywhere.

So the issue that is predominantly on the minds of my fellow citizens in Arizona is fuel. They could not care less about the energy bill that we have been debating about for the last 3 months; in fact, I think we have passed nine different pieces of legislation, and if we forget the Alaskan pipeline, which has been on our minds for many years, or the opening of the Elk Hills Reserve in northern California, I cannot recall one single piece of legislation passed by this body or the other that has made it possible for one American motorist to buy 1 more gallon of gasoline.

Mr. President, we have before us this afternoon an energy bill which, in my opinion, does not do anything for the American people, unless you want to count placing more regulations on the business of selling petroleum from wholesale to retail, or placing more emphasis on making it impossible for oil companies to operate and service stations to operate. Unless we want to continue to make it impossible to attract money to drill wells for oil and gas, or to do private research in the fields of new energy, this bill, in my opinion, not only should be recommitted but it should never see the light of day again.

The people of this country are not interested in what we are voting on this afternoon, because it does not do one single thing for the man who is out of gas. I happen to be in that category right now. My gas station that I do business with will not have gasoline until March 1. This is only a 5-mile walk, so I do not mind that, but I enjoy riding once in a while, just as every American does.

These are some of the problems that face us, in my opinion. We are told by the knowledgeable president of the Chase Manhattan Bank in New York that if we depend on petroleum to solve our energy needs, if we do not develop any new sources of petroleum in the near future, it is going to cost $1,350 trillion to get this country in a self-sufficient position once again. I am told by men for whom I have respect and upon whose judgment I rely that we need eight refineries this afternoon— not 10 or 15 or 20 years from now, but right now. It seems that we have a lot of crude oil in this country, but we do not have the ability to change it into the other forms of fuel that we need.

I think what this body should be doing, instead of trying to find out what is wrong with large oil corporations and small oil companies, is to start enticing people in this country who have money—which means individuals, companies, and corporations—into drilling wells for oil and for gas. We have practically done away with the depletion allowance that we used to use to get people to find fuel for us, and instead, for over 40 years a man who has been interested in producing petroleum for this country has been looked on as some kind of a crook.

I think it is time we say to American businessmen, "Look, if you have got the money to go out and risk drilling a well, we are willing as

a Government to see to it that you have some return in the form of tax reduction in the event that you come up with an empty hole."

Mr. President, there are other things that we are short of in this country, that we have not been addressing ourselves to. When I visited Iran last December, I went out to visit an island in the Persian Gulf where they were loading tankers.

The smallest tanker in that 30-ship service station, if you want to call it that, was about a 100,000-ton tanker, and the biggest one ran around 250,000 tons.

Mr. President, I may be mistaken, but it seems to me that we have only one place on the Pacific coast that can handle a tanker of that size. There were 13 of those ships being loaded, with 52 waiting in line, as we waited a day to get filled up ourselves. On the other side of the island, there is one loading dock that will handle two 500,000-ton tankers. We have no place in the United States that will handle tankers of that size, and no longer do we build or even handle small tankers.

I can remember back in the 1950's, I think it was 1955, when I commissioned the U.S.S. *Hassayampa*, a tanker for the U.S. Navy of 55,000 tons. I will never forget it; I stood on the bridge of that ship and I thought, nothing will ever be built that is any bigger than this. But that today, Mr. President, by the present standards of oil producers, is a very, very small ship. But that is about the maximum size of tanker that we can handle easily in this country.

So when we get to the question of getting oil off the ships that are sailing to this country, we have to spend money. I do not believe in spending Federal money to solve problems that can be solved by the spending of private money, but we have to make it interesting, and there is nothing in this Energy Emergency Act that is going to make it attractive to produce more fuel, gasoline, JP–1 and PJ–4 for the jet aircraft and for private aviation, and for all the other uses we put fuel to in this country. Not one thing.

So, Mr. President, when the time comes to vote to send this bill back to the conference committee, I certainly shall vote for that, and I shall offer my hope at that time that it be forgotten and that we never see it on this floor again, but instead that the committee get to work and write some legislation that will enable Americans, in very short order, to purchase fuel for the engines that they need to run the wheels of this country. If that hope fails, then I think it is the duty of every Member of this body to vote against final passage, because this piece of legislation is not—I repeat, Mr. President, is not—in the best interests of the American people. It is completely phony, and I think the American people should be made aware of just what it contains. If it unfortunately passes, it would be my hope that the President would not sign it into law; it is that bad.

Mr. FANNIN. Mr. President, I commend my distinguished colleague for his very logical statement. We talk about lower costs without even preparing ourselves for self-sufficiency. In fact, what this bill would accomplish is very much against the best interests of this country. Some countries can transport oil across the waters for half of what it is now costing us, because—as my distinguished colleague has illustrated—we do not have the facilities to handle the supertankers now in use around the world.

This situation has existed for some time, and still many object to construction of modern facilities, and to other steps so essential to lowering the cost of fuel in this country. I congratulate my distinguished colleague very highly for his commendable statement.

Mr. BARTLETT. Mr. President, yesterday in the debate on this bill, the distinguished Senator from Washington made a number of statements on which I should like to comment.

For example, he stated that this measure—

> Will save consumers $20 million a day in cheaper fuel costs and will still allow the oil companies financial returns sufficient to finance new investment and enjoy reasonable profits.

I think that this figure is misleading. There is no justification for it. The figure given by the FEO is that, if the consumers of this country receive all the benefits from the rollback in that 20 percent, or actually 18 percent of the total consumption of oil in this country, when they purchase a gallon of gasoline they will receive 1.4 cents in savings, or 14 cents on a 10-gallon purchase.

That 14 cents is a very small investment with the assurance that we will have an ongoing program to find additional supplies of oil and gas and energy in this country.

We had a distinguished Harvard professor testify before the committee. Later, he sent a letter to the distinguished chairman and pointed out that in his estimation, about $2 billion in savings could be realized, instead of the $7.3 billion as stated by the Senator from Washington. Then he pointed out that the $2 billion in higher costs that exists with the free market operating today, compared to the problems of the shortage we now have of 2 million barrels per day, with the multiplier effect would cause a reduction in the Gross National Product of $50 billion if that $2 billion had not been invested.

I think that the small investment each individual would make in the 14 cents saving on 10 gallons of gasoline, with the assurance that there will be sufficient energy eventually in this country, is certainly worth the small investment.

But this particular proposal locks in the shortages and will assure this Nation that we will have shortages in the future rather than self-sufficiency.

This measure also will preclude many companies from entering into efforts to bring on alternative fuels. I had information from Amoco to the effect that they would not themselves be engaging in the effort to extract oil from shale, and also that they would reduce their investment in drilling projects for 1974 by one-third, or $200 million.

Then I have some notes from Mr. Clyde Wheeler, of Sunoco, because I asked him what does it cost to extract oil from tar sands—and they are the only company I believe doing this in Canada with the Athabaska tar sands. The cost of 50,000 barrels of anticipated production per day from the tar sands in Utah, California, and Texas, would be $8 a barrel. With production of 250,000 barrels a day, it would cost $12 per barrel and to up that to 500,000 barrels per day, the estimated cost per barrel would be $20.

So we can see that the opportunity to bring on alternative fuels, which are greatly needed, would not exist if this rollback takes place.

Also the distinguished chairman said that this:

"Gives Mr. Nixon the authority in special cases to increase the price to $7.09 a barrel."

I believe that this is the only legislation providing price controls that would restrict the amount of the increase, and this restricts it to 35 percent. [Sec. 110.]

Then there is the Administrative Procedure Act that must be followed, and the burden of proof rests upon the President. So it would be virtually impossible or very difficult at best for the President to provide this increase.

If this were such good legislation, and this is the way to handle the problems of increased prices, and also to deal with the need for additional reserves of energy in this country, why did we not use the same procedure when we had a 300-percent increase in the price of wheat?

I happen to come from a wheat-producing State. I do not believe the wheat producers anticipated the price would go up as high as it did but, nonetheless, it reflected the total demand placed on wheat in this country.

If this were such a good idea, then why, when we were plagued with rising prices in plywood, did not the distinguished Senator see fit to have this kind of control written into the law, in legal cement, on timber, and also placed on the products from timber such as plywood. I do not think this would work in the case of wheat. I know that it would not. I also know it would not bring on additional supplies of timber to increase the output of plywood and decrease the price of plywood, which has been reduced in the past several months.

The distinguished Senator also mentioned that: "Prices beyond $7 a barrel actually lead to less production and are counterproductive."

In the first place, there is no assurance that the price will be $7 or that it will be pegged and fixed at $5.25. It is clear that the producing companies are going to decrease their drilling operations by one-third to one-half in 1974 if this proposal should become the law.

Instead of encouraging the development of new wildcat acreage, the present price structure does the opposite. It encourages drilling of new wells on old reservoirs that are already in production.

Senator Jackson also said on the floor that—

Well, it is very obvious from what has happened in the drilling business, when the price of oil was stagnant and flat for some 15 years, that the number of wells drilled dropped off in 1971 to one-half the rate from 1956 and this drop was more or less on a continual basis.

Then in 1973, the price increases have increased rather drastically, or significantly at least, the number of wells that were drilled.

But it is not just the drilling of wildcat wells that is important, because when one wildcat well is successful it is then important to develop that field so that it brings on all the potential production in the field. Under the present laws that exist—the present regulation—and the law on stripper wells, it permits an incentive in the free market for a new oil and also for stripper oil. This has a tendency to stimulate drilling for developmental wells as well as for wildcat wells.

I should like to remind the distinguished Senator from Washington that in order to have a sufficient increase in production, it is equally

important to bring on developmental wells as well as to bring on the wildcat wells.

I hold in my hand a letter from Mr. Robert O. Frederick, the editor of Drilling magazine, and he has a study which shows that the anticipated drilling in 1974 shows exploratory locations are up 33 percent from a year ago. This refers to the wildcat wells. The developmental wells are, fortunately, up 25 percent.

One other comment is, that unregulated prices are encouraging drilling for loopholes rather than oil. If I recall correctly the statement of the distinguished Senator, he referred to a big loophole in the stripper well provision which would permit—he said he checked this out—the twinning of a well, drilling one well next to another in a stripper field, and that, somehow or other, this was going to defeat the spirit of the law and violate it and would enable that producer to illegally or improperly make more money himself but not really to bring in more oil. Senator Hansen very ably pointed out that there was no incentive to drill a new well where stripper production existed, because strippers are already exempt from price controls.

Second, I point out to the distinguished Senator that the State regulatory agencies do not allow wells to be drilled right next to another well, as he implied. In almost every State, they have spacing requirements that limit one well to 10 acres, 20 acres, 40 acres, 160 acres, or 360 acres, and another well would not be legal.

In addition, the tremendous cost for drilling a well precludes an operator from putting down a well adjacent to another well, because his only hope would then be to have the two wells produce what the one well already is producing, and he would be suffering from a doubling of his lifting costs and his investment. So this would not be pursued.

Mr. President, I should like to yield the floor and to have the time available to me, which I have not used, allotted to the Senator from Arizona. I thank the Senator from Arizona for this time.

The PRESIDING OFFICER. Who yields time?

Mr. EAGLETON. I wonder if the floor manager, Mr. Jackson, could clarify one point about the rollback provision **[Sec. 110]** of this conference report which has been of paramount concern to me. And that has to do with the staggering increases in the price of propane gas that have taken place over the past year—in some cases increases of 30 percent. You might recall that you and I discussed this problem prior to the hearing on the rollback provision. As it stands in this report, is it clear that the rollback provision includes propane?

Mr. JACKSON. I am glad the Senator raised that point, because it is a problem of concern to many Senators here. The answer to his question is yes, rollback provision **[Sec. 110]** does include propane. I am well aware of the Senator's interest in this question and it was at his suggestion that I had the words "including propane" added to the provision so as to remove any question about it being covered. Specifically, we estimate a rollback of about 50 percent in the price of propane if this conference report is adopted. Where the average national price is now about 42 cents, it would go back to about 22 cents.

Mr. EAGLETON. I thank the distinguished floor manager for his consideration of this problem which is of serious concern in Missouri which is the No. 2 user of propane in the Nation. I wholeheartedly support the rollback and I will support the conference report.

Mr. JACKSON. Mr. President, the administration's failure to impose ceilings on crude oil prices is incomprehensible for a wide variety of reasons.

First, it is costing consumers $20 million a day, $7.7 billion a year, in overcharges.

Second, it is bad economic policy. Uncontrolled oil prices at artificially high, cartel-set levels feed inflation.

Third, the administration's decision to deregulate one-third of all domestic crude oil is illegal. Section 4 of the Emergency Petroleum Allocation Act requires that all crude oil be under price controls.

Today the Senate will have a chance to reverse this policy that overcharges consumers, that benefits only the oil industry, and which violates a law Congress adopted only 4 months ago.

Mr. President, if firm and decisive action is not taken to roll prices back to reasonable levels, this unconscionable overcharge will cost American consumers $7.7 billion over the next year. This is $35 for every man, woman, and child in the country. For the average family, this will mean an additional $140 to $200 a year increase in their fuel bill for gasoline, heating oil, and propane. This increase is over and above, and in addition to, the major increases in fuel prices which were experienced late last year.

Current domestic price levels for unregulated crude oil of $10 per barrel and up are totally artificial prices. These prices are not determined by the forces of competition. These prices are rigged. They are being dictated by an international cartel of Arab nations. These are the same nations that imposed the oil embargo against the United States in retaliation for our aid to Israel.

Respected oil analysts on Wall Street and elsewhere say that these price levels will not buy increased supply. The real constraint on supply today is not price. At $5.25 a barrel, there is plenty of incentive to bring in new supply. This is 32 percent higher than the price of crude oil last May, less than a year ago. The constraints today are shortages: shortages of trained manpower, tubular goods, drilling rigs, and practically every other material a high technology industry needs.

The unregulated and artificially high price of domestic crude oil is counterproductive. It is retarding exploration for and development of new oil discoveries. Instead of encouraging the development of new wildcat acreage, the present price structure does the opposite. It encourages the drilling of new wells on old reservoirs that are already in production.

These new wells divert scarce drilling rigs, pipe, other equipment, and manpower away from new exploration for the sole purpose of taking advantage of major loopholes in the price system. These loopholes enable the unscrupulous to take advantage, to double the value of their "old" oil—their presently producing fields—by simply drilling and pumping the oil through new wells.

Pursuit of this loophole enriches owners of producing fields. It does not produce more oil. There is no requirement under the administration's program that 1 cent of this windfall be put back into the ground to develop new supplies. And the facts are that precious little is being put back into the ground.

Mr. President, over the past year, average crude oil prices have doubled. They have gone from $3.40 per barrel in January 1973, to

$6.75 in January 1974. And while domestic crude oil prices have doubled, domestic production has remained constant. A doubling of prices has failed to elicit any new supply. In January 1973, total domestic production was 10,859,000 barrels per day. In January 1974, total production stood at 10,893,000 barrels—an increase of only 34,000 barrels.

This is what the American consumer is getting in the way of new supply at a cost of $20 million a day.

Mr. President, the present system is the worst possible of all price systems, from the standpoint of developing new energy sources.

It is common knowledge in the oil industry and elsewhere that today's unregulated prices are artificial and unstable, and that they do not provide benchmarks for long-term investment decisions. Instead, they provide only a short-term opportunity for taking windfall profits and investing these profits elsewhere, where there is more stability—in land development, in circuses, in the stock market, and in Government bonds.

Why is there wide recognition on Wall Street in the industry that these prices will not hold up for long?

First, the administration's exemption of three of the major categories of crude oil from price controls is illegal. It is in direct contravention of the provisions of the Emergency Petroleum Allocation Act, which became law on November 27, 1973. It is only a matter of time until litigation is initiated to require the administration to comply with the law.

Second, as noted above, these artificial cartel price levels serve no economic purpose. They are, in fact, counterproductive. They reduce longer term supply. They compel cynical and foolish distortions in the allocation of capital, material, and labor.

Third, the Congress at some point will act to protect the public by rolling these prices back by legislative action.

Mr. Simon, the FEO Administrator, recognizes that present price levels are unreasonable. Reports in the national press and in trade journals contend that within the administration he has advocated a price rollback but has been turned down by Roy Ash, Herbert Stein, and the White House palace guard.

The trade associations for the oil companies' own studies and data recognize that current deregulated prices are $3 to $5 per barrel above long-term price levels required to achieve domestic self-sufficiency and to bring in alternate sources of energy such as oil shale, coal liquefaction and gasification, and geothermal resources.

The Federal Government's studies also conclude that there is no justification for average oil prices of $10 per barrel.

The FEO says: "The long-term supply price . . . is $7 per barrel . . . (January 1974.)"

The Department of the Treasury says:

> Our best estimate is that it would be in the neighborhood of $7 per barrel *within the next few years.* (December 1973).

The Independent Petroleum Association of America says that—

> . . . an average price of about $6.65 per barrel for crude oil would be required in the long run to achieve 85% self-sufficiency . . . by 1980. (1973 projections.)

The National Petroleum Council says that—

For maximum attainable self-sufficiency by 1980 a price of $4.05 would give a 10 percent rate of return, while a price of $5.74 per barrel would give a 20 percent rate of return. (December 1973.)

Mr. President, it is ludicrous for the administration to be asking Canada, Venezuela, Iran, the Arab nations, and other producing countries to lower the prices of their oil—something we have no control over—when the administration refuses to limit domestic oil prices—something we do have control over.

The producing nations' best argument for maintaining artificially high prices for their oil is that their prices are about equal to the price of uncontrolled U.S. crude oil. Why, they ask, should they sell to us for less than we allow domestic producers to charge? That is exactly what the Canadians told us to our faces a few days ago when we asked them to cut back their prices.

This administration is still committed to the 19th century notion that the way to deal with the energy shortage is to limit demand by raising consumer prices.

The White House either does not know or does not care that this foolish and intellectually indefensible policy has cruel and disastrous consequences for the poor and the middle class. It is a stupid policy because it is counterproductive to the national interest. It is an unfair policy because it enables the affluent to buy their way out and, at the same time, it gives the oil companies billions of dollars in unearned profits.

The only relief in sight for the consuming public is congressional action on the conference report on the Energy Emergency Act.

The price rollback provisions **[Sec. 110]** of the report will bring uncontrolled oil—new oil, released oil, State royalty oil, and stripper well oil—under a reasonable system of price ceilings. At present, these four categories of oil constitute 29 percent of our domestic supply and are selling at an average price of about $10 per barrel—2½ times the level of less than a year ago. By the end of the year if Congress fails to act, at least 44 percent of all domestic oil will be selling at world cartel prices.

Mr. President, the way to deal with the unreasonable windfall profits the major oil companies are receiving is for the Congress to roll back unreasonable prices.

Today the Senate has that opportunity.

The debate over the price rollback provisions of the bill should not be allowed to obscure the fact that other provisions are of critical importance in dealing with the shortage, spiraling prices, growing inflation, and the confusion and near panic facing the country.

These provisions include:

UNEMPLOYMENT ASSISTANCE BENEFITS

The bill provides authority for $500 million in grants-in-aid to the States to provide minimum of 6 months' additional unemployment compensation benefits to individuals left jobless as a result of the energy shortage. This assistance will enable the 249,000 working men and women who are unemployed as a direct result of the shortage to meet essential food and housing needs. It will also provide assistance

for many of the additional 2 million working people that economist Walter Heller predicts will be added to the unemployment rolls this year. **[Sec. 116.]**

NEW LEGAL PROTECTION FOR SERVICE STATION DEALERS

The bill provides valuable new legal rights and judicial remedies designed to prevent arbitrary and unreasonable actions by large oil companies against service station dealers. This provision assures fair dealing, due process and, where necessary, guarantees that dealers will have a day in court to protect their interests. This provision will slow and halt the arbitrary lease and franchise cancellations which have shut down thousands of stations across the country. **[Sec. 111.]**

MANDATORY DISCLOSURE OF OIL INDUSTRY DATA

The bill requires, for the first time, the mandatory disclosure by the oil industry of reliable data and information on reserves, production levels, refinery runs, stock levels, imports, prices, and other information essential to understanding and dealing with the energy shortage. Information furnished under the bill is to be made available to the Administrator, the Congress, the States, and the public. This new authority will bring to an end the comedy of errors and the confusion of the present voluntary reporting systems. Present systems find the oil industry and the Federal Government hundreds of thousands, and sometimes millions of barrels, apart on the volume of oil imports and other vital categories of information. **[Sec. 124.]**

STRINGENT ANTITRUST SAFEGUARDS

The bill contains mandatory standards and procedures designed to insure that agreements among and common courses of action by the oil companies to deal with the shortages do not result in permanent violations of the letter and spirit of the antitrust laws. In recent years, the oil industry has experienced a whole series of major adjustments and market realinements which pose serious threats to competition. Under shortage conditions these threats can become reality as the big companies grow stronger and more profitable and the small companies grow weaker, more dependent and more vulnerable. This provision of the Energy Emergency Act will insure that this does not happen. **[Sec. 114.]**

AUTHORITY FOR REGULAR GAS STATION OPERATING HOURS, ENERGY CONSERVATION, PLANS, AND GASOLINE RATIONING

The bill provides the basic legal authority for a wide range of actions designed to conserve scarce energy resources in a manner that is fair to all classes of consumers and all regions of the country. These actions must be proposed in specific terms and are subject to Congressional review and veto. One of the most important actions contemplated is a program to provide the American people with certainty and regularity as to service station hours. **[Sec. 105.]**

The bill also provides authority for the establishment of a national, stand-by gasoline rationing program. Implementation of rationing may prove inevitable in the months ahead if shortages persist and if

other State and Federal programs do not serve to bring some sense of order to the chaotic situation which exists in many regions of the country. [Sec. 104.]

ADDITIONAL AUTHORITY

Other major provisions of the bill which are vital to effectively dealing with shortages include statutory authority for:

Allocation of fuels and essential materials to those engaged in developing new energy supplies; [Sec. 107]

Convention of stationary powerplants from oil and natural gas to coal in a manner consistent with the goals of the Clean Air Act; [Sec. 106]

Accelerated domestic oil production; [Sec. 108]

Insuring that all emergency actions are taken in an equitable manner which prevents arbitrary and unreasonable action; [Sec. 112]

Restricting exports of needed fuels; [Sec. 115]

Increasing the use of carpools; [Sec. 117]

Grants-in-aid to assist State and local governments; [Sec. 123]

Low-interest loans to home owners and small businesses to assist in improvement projects which are designed to conserve energy. [Sec. 130.]

Mr. President, the Nation is looking to Congress for leadership and action. We are in a national emergency, make no mistake about it. The Gallup poll shows Congress at its lowest level in history so far as its standing with the American people is concerned. We are now confronted with a grave emergency.

If this Congress sends this conference report back to conference so that it is there for a third time, I know what the American people are going to say. They are going to say that Congress cannot deal with a national emergency, and they will be right in saying so. Every provision in this bill relates to things happening to people each and every day. To say, "Leave things alone and everything will be fine." provides no answer; that is what is going on now. Prices are going up and the supplies available to meet the needs are going down. We are having fist fights in gas stations and we will soon have riots in the streets unless we pass this emergency legislation.

Mr. President, I ask unanimous consent that a telegram from Mr. Leonard Woodcock, the president of the United Auto Workers, be printed in the Record.

There being no objection, the telegram was ordered to be printed in the Record, as follows:

FEBRUARY 18, 1974.

Hon. HENRY M. JACKSON,
Chairman, Senate Interior Committee,
Washington, D.C.

UAW strongly supports unemployment compensation provisions of the emergency energy conference report and urges Congress to enact S. 2589. With unemployment rising at frightening rates, especially in the automobile industry, the type of assistance for workingmen and women proposed in S. 2589 is desperately needed. We urge most strongly an affirmative vote on the conference report when it comes to a vote on Tuesday of this week.

LEONARD WOODCOCK,
UAW International Union.

Mr. PERCY. Mr. President, I have a high regard for my distinguished colleague, the Senator from Washington. We work together

on many issues but we simply have an honest difference of opinion in this particular case.

I would like to first comment on a question I had, sitting as a back seater some 7 years ago when I saw one of our distinguished colleagues, who has now left the Senate, hurry into the Chamber toward the end of a vote. He said to the clerk standing alongside the door, "What are we voting on?"

The clerk said, "Clean water."

"My heavens," the Senator said, "how can I be against that?" And he voted "aye."

I do not know how many Senators have read in detail the provisions of this bill and studied all of the legislation in this particular field. As Senators we are greatly dependent upon the work of our committees. But I presume that if someone came in who had not studied it and saw the title of this bill, the Energy Emergency Act, he would wonder how he could possibly be against that in light of the emergency with which we are faced today.

But in my judgment it would be a great mistake, simply because we have an emergency today, to rush in and adopt legislation that is as controversial in its impact as the provisions of this bill would be. I would like to summarize very briefly some of the principal reasons I intend to vote for recommittal of the conference report and, then, if the legislation is voted on up or down, I intend to vote against the bill. Time permitting, I wish to go into greater detail.

The first reason I intend to vote against the legislation is because I essentially do not come from an oil-producing State. Some oil is produced in Illinois but essentially Illinois is a State of consumers, with 11½ million of them. My job is more to represent the consumer than the producer. In my judgment the consumer is not going to benefit from this legislation. The consumer, at the very best, will have a short-term rollback in the price of gasoline of a maximum of 2 cents per gallon. If in the end, the bill does reduce available supply, as I believe it will, pressure on prices will be upward rather than downward, and I defy Congress to legislate against the laws of supply and demand. That is another reason I feel this price rollback provision is not good legislation. **[Sec. 110.]**

I feel that it is not wise for Congress to move into the free economy and to put into law the price of a particular product which is sensitive to the laws of supply and demand and sensitive to all prevailing pressures. The President already has adequate authority to roll back prices of all except stripper oil. If after a thorough study and knowing the consequences the President decides to use that authority he can do so without fixing the prices in statute.

So I feel the price effect will be negative on the consumer in the long run. Certainly it will have an adverse impact on developing alternate sources of fuel, such as shale. That is a highly costly and risky project right now. Anything that is done to place in jeopardy the return on that investment will not help to attract the kind of capital we want.

The second reason I am against the conference report is, as the distinguished Senator from Washington knows, that the Senate has already passed a bill reported by the Committee on Government Operations, which would give statutory authority to the Federal Energy Administrator.

The bill that we are now voting on has a very sparse FEEA section, compared with the well researched bill, S. 2776, which has passed the Senate and is awaiting action by the House.

The third reason why I shall vote against the conference report is that I do not believe it is possible to set up special unemployment benefits for those who are unemployed simply because of the energy crisis [Sec. 116] for the reason that it is often difficult to know what the reasons for the unemployment would be. I would rather have legislation involving the unemployed which would go through the Labor and Public Welfare Committee and have everybody treated on the same basis. If one is unemployed, for whatever reason, he is unemployed. If we are going to have one set of benefits for those who are unemployed as a result of the energy crisis, and another set of benefits for those who are unemployed for another reason, we are going to have a hodgepodge that would be grossly unfair for people who are unemployed for other reasons.

The fourth reason why I shall vote against the conference report is that I believe it violates the clean air requirements in the provisions on auto emission standards and on the conversion of powerplant to coal. [Sec. 203, Sec. 106.]

I am certainly not ready to say the nature of the energy emergency is such that we should proceed in a wholesale sweeping aside of legislation that it has taken years to enact into law.

The fifth reason——

Mr. MUSKIE. Mr. President, will the Senator yield?

I will expand on this later, but as I understood the Senator's statement, he describes the environmental provision [Title II] in this conference report as sweeping aside the safeguards that we have developed over 10 years. I will challenege that characterization. I shall get into it later when I have my own time. I do not think that is a fair characterization of what is in the bill.

I have seen such sweeping descriptions of the bill in the press, and I intend to answer them later. I simply rise at this time to establish a convenient point of reference for what I shall say.

Mr. PERCY. I would like to have any clarification by the Senator from Maine. It is my understanding that there is a delay in the automobile emission standards in the bill before us today, and provision for conversion to the use of coal, and that certain clean air requirements could be suspended for an additional 5-year period; but I would be happy to hear the Senator document or clarify that.

Mr. MUSKIE. The characterization I object to is not the one the Senator has stated, but the language "sweeping away environmental safeguards." I will say to the Senator I shall never be a party to any such result. I have clearly been a party to these provisions of the legislation. I intend to describe them as objectively as I can. I simply object to that description, and I will speak on it later.

Mr. PERCY. The Senator from Illinois has said there is a sweeping aside, in his judgment, of the time frame in which those regulations were established.

Mr. MUSKIE. I say there is no sweeping aside.

Mr. PERCY. And I said I am not prepared to say at this stage that the emergency is such that we should sweep them aside when the Senator has been fighting for years for the kinds of standards we should

have. If there is to be a setting aside of those standards, the appropriate committee, the Public Works Committee, should report back, after appropriate study and hearings, that the standards should be set aside.

Mr. MUSKIE. Mr. President, I would like to yield myself 1 more minute. I doubt that there is anything in the record to suggest that the Senator from Maine is inclined to be reckless about tampering with the environmental laws which the Senator from Maine has been so closely associated with for the past 10 years, and I doubt if there is anything in the record of deliberations on those provisions in the conference report to justify that kind of characterization.

Whether or not a particular change can fully be described as sweeping away environmental safeguards is something that Senators can judge for themselves when they read the Record. I object, and object strongly, to any such characterization, and I shall not undertake to trespass further on the Senator's time on this point. I will later, on my own time, make that point. I think I am perfectly able to do that, but I object to that kind of sweeping characterization.

I will say to the Senator that such a characterization is a disservice to the environmental objectives and safeguards to which he and I subscribe. It is the kind of exaggerated language which I find sometimes in the press and from others who have not read carefully what we have done in this conference report, and a disservice to the energy crisis leigslation. However, I will cover it later.

Mr. PERCY. It is the privilege of the Senator from Maine to clarify what he believes this bill accomplishes, of course, but it was the recollection of the Senator from Illinois that the Senator from Maine stated that it was necessary to make compromises in connection with the efforts made in the interest of speedy enactment of the energy legislation. I understood that the bill has been delayed, the Senator expressed doubts as to whether those compromises should have been made. But I will remain on the floor to hear the Senator clarify his position, because the Senator from Illinois does not wish to misstate the position of the Senator from Maine.

Mr. MUSKIE. Mr. President, I reluctantly take another minute. So long as the Senator continues to refer to what he understands my position to be, I am under pressure to respond at the moment.

The reservations during, I think, the week before the Lincoln Day recess, had to do with the credibility of the administration's commitments to the need for urgent legislation to deal with the energy crisis. My own understanding of what we have done with respect to the environmental problems is no different than it was when the conference report was reported to the Senate. I made the point I made the week before last because it seemed the administration was fudging on the need for urgent action. What we have endeavored to do with respect to the environmental problems has been carefully structured on long established safeguards and environmental laws.

I repeat again, I object, and object vigorously, to the characterization of those efforts as a sweeping away of the environmental safeguards, with which I think I have had as much to do in erecting as anyone in the Senate.

Mr. PERCY. In light of the comments of the Senator from Maine, it does appear that my initial statement was too broad and sweeping, and I withdraw it.

To clarify the record, I should like to read from the Congressional Record exactly what the Senator from Maine said in his statement of February 7. He said, as appears at page S1506 of the Congressional Record for February 7, 1974:

> Now, there are changes in environmental policy in this bill that merit long and deliberate consideration; matters that were not even considered on the floor of the Senate but were included in the House version of the bill. I was willing to consider these matters, because Mr. Simon told us he needed this authority and asked, would I not please resolve my doubts—in the interest of urgency.

I would hope that whatever the Senator from Illinois has said would be consistent with his interpretation of this particular statement by the Senator from Maine.

The fifth reason why I have been concerned about this legislation is that it places the ball for rationing right in the President's court and puts us in the position of a $1 billion decision on whether we ration or not. [Sec. 104.] In doing this, the Congress really abdicates its responsibility on the crux of a question that is vital to most Americans today who are motorists. We simply walk away from that responsibility and delegate it to the President.

Finally, Mr. President, I feel that whenever we get into the questions of taxes we should leave that matter to the Committee on Finance and the House Committee on Ways and Means who are now holding hearings.

I do not feel that we have resolved this matter satisfactorily. I would prefer to leave it to the Finance Committee.

Mr. President, the latest Harris survey confirms the lack of confidence American people have in the energy crisis. Only 10 percent of those responding to the survey approve of Congress' handling of the energy shortages, while fully 82 percent disapprove of our actions in the face of this crisis.

Another nationally recognized survey, by the National Opinion Research Center at the University of Chicago, hardly offers more solace. Over 38 percent of the people interviewed during the week of February 7 placed primary responsibility for the current energy shortage on the Federal Government and 48 percent of the respondents rated the Federal response to this crisis as poor.

The low esteem demonstrated by these surveys is richly deserved by the Congress, when one considers the way we have handled S. 2589, the Energy Emergency Act. Three full months have now passed since this urgently needed legislation was rushed through the Senate, to give the President those sweeping powers we were told he needed to cope with the impending energy emergency.

I realize that many here in the Congress, in the executive branch, and in the State governments all across the Nation have worked diligently to come to grips with our serious shortage of petroleum products. But it is becoming increasingly apparent that the American people perceive the Congress and the executive branch as being totally inadequate to deal effectively with the problem. Now, why is this so?

During the past 3 months, S. 2589 has twice been rushed through midnight conferences with the House, only to see the Congress go into recess, in order to contemplate the bill I suppose, before voting on it.

Now, with most of winter behind us, we are once again asked to vote on the emergency bill, while public skepticism grows daily as to the

real nature of the energy emergency. Whether or not there is a true emergency, we must not act in haste. Let us not make the same mistake that we made on year-round daylight savings time. If we had gotten more facts before acting on that proposal, we would have discovered that March 1 would probably have been a better date to begin daylight savings time than January 6.

Meanwhile, the administration, which originally asked for the emergency authorities in S. 2589 on an urgent basis, now appears to be itself divided as to the extent and duration of the present fuel crisis. OMB Director Ash calls the situation "manageable, one time, and short term" while energy chief Simon warns of shortages for years to come.

The administration's previous ambivalence about the need for this bill, now clarified by its outright opposition and threatened veto, is matched by that of the bill's prime sponsors in this body. If the emergency authorities were so important in November that the bill needed to be passed after only 2 days of Senate hearings, 2 days of markup, and 3 days of debate, then why was the conference bill allowed to be saddled with so many extraneous House amendments? And faced with such tremendous opposition to the unworkable windfall profits provision in the first conference report, why was it necessary to include an equally controversial price rollback provision [Sec. 110] in the second conference report, the effect of which will certainly be to reduce available supplies needed to meet current and future demand and bring prices down?

All of these extraneous provisions, drafted hastily in conference without the benefit of full hearings, only have the effect of delaying the bill further, and thus further diminishing public confidence in the ability of Congress to act. Congress has rarely looked so foolish in the eyes of the public than it has on this bill. Congress has appeared unable or unwilling to complete the relatively simple task of providing basic energy conservation authorities to the executive branch without burdening the legislation with irrelevant and ill-conceived provisions that many consider the jurisdiction of the committee primarily responsible for this bill. These irrelevant provisions should be dropped from the bill. We should quickly enact only those emergency authorities that are truly needed, and safeguard them with adequate congressional oversight.

Let us look again at these superfluous provisions which I pointed out in my statement on the Senate floor on January 29, when I voted to recommit this bill the first time.

First is section 103, which establishes in only the most skeletal form a statutory Federal Energy Emergency Administration. The agency is given no clearly defined functions or staff. No new authorities are transferred to it. This section of the bill seems far more intent on insuring that the agency's budget and legislative proposals bypass the Office of Management and Budget, than in providing it with any kind of meaningful authority to manage an energy emergency.

As the sponsors of S. 2589 know very well, the Senate has already passed a much more carefully designed bill to give statutory status to the Federal Energy Emergency Administration. That bill, which passed the Senate before Christmas by an overwhelming majority, is S. 2776. It was reported by the Government Operations Committee, the committee of jurisdiction over executive reorganization. The House

companion bill was poised for passage by the House, only to be delayed because of the reemergence of S. 2589 from conference. The House is ready to pass a good FEEA bill this very week, so there is no need whatever for section 103 in S. 2589.

I urge that we strike **section 103** from this conference report and let the FEEA bill pass the House and be enacted into law.

Another extraneous provision is **section 116**, which grants unemployment assistance to those unemployed due to energy shortages, without regard for their eligibility under the well-established State unemployment compensation programs. This section is inequitable because it discriminates against those who cannot prove they lost their jobs as a result of the energy crisis. It is unwise, because it disregards the carefully established criteria for unemployment insurance eligibility under present programs. And it is illogical, because it does nothing to help the unemployed get what they need most—a new job.

Some of my colleagues and I have proposed as an alternative an immediate increase in the appropriation for the public employment program. This program would provide jobs, not handouts, for the unemployed.

Section 116 should be deleted from this conference report, and the problem of unemployment assistance should be placed in the hands of the Labor and Public Welfare Committee, which has jurisdiction over unemployment compensation programs.

A third extraneous provision is **section 201 [Sec. 119 CAA]**, which permits suspension of certain clean air requirements for up to 5 years in powerplants that convert to coal. As I said in my January 29 statement, I believe the coal conversion and auto emission provisions of the conference report go too far in turning back the environmental clock for the sake of an energy emergency whose true extent is yet to be determined.

Senator Muskie, chairman of the Subcommittee on Air and Water Pollution, has stated that he was asked to make compromises with the environmental provisions of S. 2589, in the interests of speedy enactment of the emergency authorities. Now that the bill has been delayed, he has expressed doubts as to whether those compromises should have been made. I believe the inclusion in the conference report of the House provisions affecting air quality standards has upset the delicate balance between the need for energy and the need to preserve and protect the environment. The balance has been tipped too heavily against the environment in this bill.

We know now that the initial predictions as to the extent of this winter's shortage of crude oil were exaggerated due in part to a relatively mild winter. Now that we have a better understanding of the nature and extent of the shortage, it would be good to review the compromises that this bill makes with the environment. Let us eliminate from the bill any long term suspensions of clean air standards, and let the committee with proper jurisdiction, the Public Works Committee, make a more careful evaluation of the need for any such derogation of environmental quality.

A fourth extraneous provision is of course **section 110**, which establishes ceiling prices on domestic crude oil, residual oil and refined petroleum products. This section was drafted in conference as a sub-

stitute for an almost totally unrelated House provision on pricing to prevent so-called windfall profits.

The old **section 110** would have been unworkable in practice and would have had no effect on the profits of oil companies this year. It was politically attractive for some because it was incorrectly described in the media as a "windfall profits tax" on the major oil companies. In reality, it was not a tax on any profits, "windfall" or otherwise.

The new **section 110** is undesirable for both economic and energy policy reasons, because it will reduce the incentive for domestic exploration by independent oil producers. Like the old **section 110**, it will have almost no effect on the profits of major oil companies this year. However, this new section is considered politically attractive by some who mistakenly believe that it will significantly reduce consumer prices of gasoline and heating oil.

If the political intent of **section 110** is somehow to punish the major oil companies, it is both improper and faulty. Under this provision neither the price of foreign oil, which is totally out of control, nor the price of "old" domestic oil, which is already under Federal controls, would be affected in the slightest. The only effect would be to roll back the uncontrolled price of "new" domestic oil, about 90 percent of which is produced by small and independent oil producers, not the major oil companies.

In Illinois for instance, where 80 percent of all oil production is carried on by independents, the effect of a price rollback would be immediate and severe, some say even disastrous. The new higher prices have made high-risk drilling and exploration profitable again and it is expected that increased supply can be brought to market. But a rollback of $3 or $4 a barrel would reduce or totally remove the incentive for this exploration. It would decrease total oil production in Illinois by 15 or 20 percent immediately and perhaps by as much as 50 percent in the long run according to geologists and economists advising the Independent Oil Producers Association of Illinois, Indiana, and Kentucky.

The result of any action we take must be to increase the incentive for exploration and production, not decrease it. For example, we should be looking for ways to encourage development of offshore oil resources, if the environmental safeguards can be met, rather than discouraging the risky exploration ventures that have just recently begun.

If the political purpose of **section 110** is to reduce dramatically the price to the consumer of gasoline and heating oil, it fails on that count too. Secretary of the Treasury George Shultz indicated in testimony before the House Ways and Means Committee that a rollback of about $3 or $4 per barrel of new oil would reduce the retail gasoline price by less than 2 cents a gallon.

Finally, some have said that one of the purposes of this section is to politically embarrass the administration. If this is so, it is likely to backfire on the sponsors of the bill. The administration already has authority under the Economic Stabilization Act to roll back prices of all except stripper oil, and the Federal Energy Office is already giving careful and detailed consideration to rollbacks in the price of new oil and propane, but I trust will only so after it determines the full effect of this action.

I believe that it would be dangerous for the Congress to legislate, and thus build into law, specific prices on specific products that are sub-

ject to the volatility of the marketplace. When we, by such action, attempt to repeal the law of supply and demand we are taking unto ourselves a responsibility that requires more wisdom, flexibility, and swiftness of movement than we have heretofore demonstrated.

If we, in the Congress, are to effect any meaningful reform of the oil pricing system, we should be looking at the special tax structure that has been built up for the major oil companies, rather than playing games with price ceilings. For example, are the oil companies really paying an income tax to the Arab countries or is it actually a larger royalty or an excise tax? If it is really an excise tax, both the tax and any royalties should logically be treated as expenses and deducted from total revenues, rather than being credited against U.S. tax liability. Other areas which certainly need further examination and correction are the depletion allowances on foreign drilling and the practice of transferring income between countries in order to avoid U.S. taxes. These are only a few examples of areas which need to be looked into more carefully. Both the Senate Finance Committee and the House Ways and Means Committee have been considering these and other ideas in their recent hearings on oil company taxes. The expertise these committees possess should not be bypassed or disregarded.

We should end the political gimmickry which has plagued this energy emergency bill from the start. Let us eliminate **section 110** from the conference report and let those committees with jurisdiction over revenue matters report a bill that will deal responsibly with the problem of excessive oil company profits—through the tax mechanism.

There is one other section of this conference report which troubles me greatly. This is **section 104**, which explicitly reserves to the President the sole power to institute nationwide mandatory coupon gasoline rationing.

In this respect, the bill is totally inconsistent: It flaunts congressional veto power over some relatively minor energy conservation proposals, while handing over to the President carte blanche to make the dynamite political decision of the year—gas rationing—without so much as a "by your leave" from the Congress. This is irresponsible gamesmanship in my judgment.

I am personally opposed to gasoline rationing. We should avoid it at all costs and exhaust every alternative first. It will cost a billion dollars a year and will be unequitable and unfair—a bureaucratic nightmare. But if all else fails and it does become necessary, we in the Congress should participate in making that decision and fully share in the responsibility.

In November, the Senate voted 40 to 48 against imposing mandatory gasoline rationing by January 15. The issue has not since been brought to a vote. Yet this conference report would let the President decide if and when to impose mandatory rationing. It would tell the President to make that tough decision for us, thus enabling us to avoid the political risks.

The Congress should face up to the rationing question. **Section 104** should be stricken from the bill, and any proposal for gasoline rationing should be submitted to the Congress for approval or disapproval under **section 105**, just like any other energy conservation plan.

Mr. President, I regret to say that the Energy Emergency Act is a sorry product of the congressional process. It was hastily molded

before Thanksgiving, hastily remolded before Christmas. hastily remolded before Lincoln's birthday—and between holidays it has just moldered.

S. 2589 is the kind of energy legislation that has helped earn Congress the disapproval of 82 percent of the American public. I am against S. 2589 for the reasons which I have stated here today.

I will vote to recommit the bill to conference, where it should be stripped to its essential conservation authority. I predict that a simple, straightforward bill containing only the necessary energy emergency authorities for the President, tempered by adequate congressional oversight, and unencumbered by irrelevant extra baggage, would pass both Houses of Congress expeditiously.

If the bill is not recommitted to conference, I shall vote against adoption of the conference report.

THE CLEAN AIR PROVISION [Title II]

Mr. BAKER. Mr. President. the clean air provisions incorporated in this conference report are substantially similar to those originally reported to the Senate last December. The mechanism then, as now, reflected a careful concern for meeting the energy crisis and for protecting the effectiveness of our environmental programs. The conferees have incorporated a few modifications in the language of the clean air provisions to correct some minor technical problems and to tighten the coal conversion and stationary source plan revision procedures.

The mechanism for coal conversion incorporated in the report remains a two-phased program. The first phase provides a temporary variance until November 1, 1974, to permit conversions from oil or gas to coal in the face of the immediate crisis. **[Sec. 119 CAA.]** The second phase provides for a modification of air quality implementation plans so that conversions to coal may continue for a longer time. **[Sec. 110 CAA.]**

Senator Muskie has outlined the modifications made with regard to the stationary source provision in his statement, and I will not prolong the debate by restating the details of these changes. I would like to discuss, however. some basic policies which founded the strategy adopted by the conferees last December, which are clarified in modifications made during conference meetings earlier this week.

There are some lessons to be learned from our present predicament—primary among these as regards the clean air program is that fuel-switching strategies which make us dependent upon foreign oil sources are neither environmentally safe nor politically prudent.

During the past several years, several air quality regions have depended heavily upon foreign low-sulfur oil to avoid serious air quality problems. It is ironic and tragic that these communities which had most rapidly moved to meet air standards in response to urgent health problems are now confronted by the ineffectiveness of their strategy.

The strategy modification which is dictated by **title II** of S. 2589 will not avert totally the environmental problem which the failure of existing strategies is causing—but I am convinced that by developing a mechanism that directs us toward increased utilization of domestic coal reserves, the provision will lead the Nation toward a clean air strategy which will be more dependable than previous strategies and one which will start us toward our goal of energy self-sufficiency.

Under the clean air provision in the conference report now before the Senate, stationary sources which elect, because of the unavailability of sufficient supplies of complying fuels, to continue burning coal beyond November 1, 1974, may be granted a revision of State implementation plans to permit them to do so. **[Sec. 119(b) CAA.]**

The revised program of controls would provide that the source should burn low-sulfur coal as a substitute for unavailable low-sulfur oil or gas as soon as such coal is available. In the event that low sulfur coal is not available, the source must choose an alternative strategy to achieve emission reductions consistent with standards applicable at the date of conversion as soon as practicable, but in no event later than 1979. Alternative strategies based upon the use of high-sulfur coals could consist of stack gas scrubbing systems, coal gasification or liquefaction systems, or any of a number of other developing strategies which might come on line by 1979. **[Sec. 119(b) CAA.]**

No matter which strategy a source chooses to meet the applicable emission limitation, there are two safeguards which apply to prevent the source from substantially contributing to a health hazard until that strategy becomes effective. First, the Administrator of the Environmental Protection Agency may prevent coal conversions or may place conditions upon converting sources in order to protect health. These conditions could include the specification of the maximum sulfur content of coal which might be burned by the converting plant. Secondly, the Administrator may require interim strategies to reduce the impact of emissions. The interim strategies could include maintenance of emergency reserves of complying fuels and utilization of intermittent control strategies. **[Sec. 119(b) CAA.]**

But the hallmark of the new strategy is that it places emphasis upon the utilization of low-sulfur coal. The United States possesses almost half of the world's known reserves of coal. We possess in excess of 200 billion tons of low-sulfur bituminous coal. But we have not made a commitment to the development of these reserves; and we have not, insofar as we have made that commitment, placed proper emphasis upon development of low-sulfur reserves.

Eventually, an effective technology may be found to remove sulfur emissions after the burning of high-sulfur coals. Presently, however, available technologies are tremendously expensive and are frought with environmental ramifications which could become equally as serious as those they control. In view of this situation, it is amazing and indefensible that low-sulfur coals do not enjoy a competitive advantage over higher sulfur coals. If coal is to play a significant role in meeting our immediate energy needs, this situation must be corrected.

A matter of direct consequence to the strategy outlined in the clean air provision is the Surface Mine Reclamation Act which the Senate passed last fall and which is presently awaiting action in the House of Representatives. I am aware of a sentiment which is being cultivated in some areas that stiff reclamation controls are inconsistent with plans for expanded coal use. Such an attitude can only be characterized as callous and cynical. It is only logical that if we are to have expanded coal production, we must have strong and effective safeguards to prevent the further proliferation of the devastation which has been permitted to occur in Appalachia and other coal-bearing regions.

Our heritage is replete with bromides to the effect that preparedness and prevention are virtues, procrastination and shortsightedness vices. But aphorisms are not a substitute for a determination to follow wise policies.

I hope that the Congress is beginning to develop a little farsightedness in view of the environmental and energy crisis which are becoming a chronic condition in our society. We are making a commitment to increased utilization of coal by the programs incorporated in this conference report. It is clear and incontrovertible that if we do not make provision to produce that coal in an environmentally sound manner, in a short time we will be confronted by yet another environmental crisis. And there is no envrionmental problem more devastating and frustrating and difficult to repair than the land pollution associated with improperly reclaimed strip mining. Anyone who does not fully appreciate what I mean need only survey the Cumberland Mountains of eastern Tennessee and Kentucky to be made painfully aware of the fact.

On a separate issue, I am pleased that **section 118** of the conference report, providing for administrative and judicial procedures for review of actions taken under the Energy Emergency Act, has remained intact. I sponsored an amendment in the initial conference on this bill to increase procedural safeguards in connection with the many precedent setting decisions which will be made under the authorities of this act. Under this measure, these actions will be subject to full public disclosure with ample opportunity for presentation of views by the public. In my opinion, the provision fully comports with due process requirements and provides adequate safeguards against administrative abuse of the powers granted by the act.

While I still retain reservations with regard to some provisions of this act, the measure contains safeguards and programs which will provide badly needed relief from our energy problems. I support the measure and urge its adoption.

UNEMPLOYMENT COMPENSATION [Sec. 116]—AN IMPORTANT PART OF THE CONFERENCE REPORT

Mr. Randolph. Mr. President, the conference report on S. 2589 has been before the Senate for 2 months. It has been examined in minute detail during that time both before and after its recommital to the conference committee.

This is a very complex—though carefully developed—measure intended to alleviate the impact the energy shortage our country is now enduring. This legislation was designated from the outset as an emergency bill which should be expedited. I deeply regret that it was not enacted nearly 2 weeks ago. Much has already been lost by delay and much more will be lost if we equivocate today.

My feelings on the urgency of action are well-known. I likewise discussed many other aspects of the bill during Senate debate. I have explored such topics as air pollution, coal conversion, transportation controls, gasoline rationing and other energy-saving features of the bill. Therefore, I will not review these subjects again as we approach the decisive votes on this conference report.

I will take this opportunity, however, to call attention to one feature of the legislation which can do much to alleviate personal hardship that is already being inflicted on our citizens by the energy crisis.

Almost daily there are newspaper stories of layoffs of workers from our industries. Thousands have already lost their jobs in the automobile industry and more are likely to be unemployed as stocks of unsold cars continue to mount. Throughout our economy unemployment may ultimately mount into the millions.

Section 116 of the conference report provides Federal assistance to ease the human side of the energy crisis. It authorizes Federal grants to the States to provide compensation payments to individuals who have become unemployed as a result of the energy crisis. These unemployment funds will be available to persons who might not otherwise be eligible for such payments or who may have exhausted their eligibility. The section also directs the President to report to the Congress within 60 days on the existing and prospective impact of energy shortages on employment. He must also assess the adequacy of existing compensation programs to meet the needs of the unemployed and include such legislative recommendations as he feels are necessary.

Mr. President, I sponsored the provisions of section 116 and urged their inclusion in this conference report. These provisions are similar to those that I have sponsored in other legislation which has been adopted by the Senate, including the surface mine control bill.

In addressing the problems of the energy crisis we must not become so engrossed in the physical shortages of fuel supplies that we lose sight of the individual needs of our people. This section of the conference report will enable many Americans to survive through personal trials imposed on them during this difficult time.

Mr. JACKSON. Mr. President, first I would like to say that the bill in conference involved three committees—the Commerce Committee, in which the distinguished Presiding Officer, the Senator from Alaska (Mr. Stevens), was an active participant, the Public Works Committee, in which Senators Randolph, Baker, and Muskie played such an important role, as well as the members of the Committee on Interior and Insular Affairs, on both sides of the aisle.

I think the Senators should know that there is a multiplicity of coordination of respective committees involved here.

The Senator from Maine (Mr. Muskie) had the toughest assignment in the meetings of his subcommittee. We had two of those meetings. I have nothing but praise for the courageous, sensible way in which the Senator dealt with the economic problems on the one hand, the real problem affecting the life of every man and woman in America, and the environmental question on the other hand.

I am proud to have worked with him in the economic decisions that are being made here day after day.

Mr. MUSKIE. Mr. President, I express my appreciation to the distinguished manager of the bill who has given such leadership in the consideration of the pending measure.

It is not an easy challenge to meet legislatively. It runs across several committee lines of jurisdiction as well as a wide range of interests in our society which are understandably controversial and difficult.

I will confine my comments this afternoon to the environmental issues which have been raised by the bill. I think that I might be most

helpful to my colleagues if I were to refer first to an article which appeared in the Washington Post of February 16, 1974, under the byline of Morton Mintz, on page A1 of that issue. It appears under the headline "Shift to Coal Seen Shortening Lives."

I will read the first three paragraphs of that article and will comment on each of them in order to put them strongly into perspective with this bill.

The first paragraph reads as follows:

Thousands of persons with heart and respiratory diseases will die prematurely if plans go through for a massive conversion of power plants to coal, American Public Health Association scientists warn.

Mr. President, let me say flatly and I think beyond any successful possibility of contradiction that if that kind of risk were involved in any proposal to convert to coal under the provisions of this bill, it would not be permissible.

The second paragraph of the article reads as follows:

Tens of thousands more persons with such diseases will suffer acute attacks, according to the scientists, who have made an unpublished study for the association.

Again, I repeat that if there were any risk that tens of thousands more persons with such diseases might suffer acute attacks, that would be prohibited by the provisions of the pending legislation.

The third paragraph reads as follows:

The Nixon administration has asked Congress to give Federal Energy Office Director William E. Simon authority to order all power plants that can convert to coal to do so.

The implication of that paragraph is that the administration is requested and that this bill provides the kind of massive conversion of powerplants to coal which is described in the article. No such request has been made and this legislation does not permit any such massive conversion.

So, the story which was published at a time that may have given some persons fear that it related to this bill does not relate to the bill at all.

That was my own evaluation of the story. In order to reassure myself on this matter, I wrote on February 18, 1974, to Mr. S. David Freeman, director of the Energy Policy Project, which is the sponsor of this unpublished study as described in the Post article.

My letter among other things states:

Recent news accounts of this study suggest that the report is directed to the matter of conversion of electric power plants from petroleum-based fuels to coal. Because the Senate will consider legislation tomorrow which would direct or permit certain limited conversions of this type, I would appreciate a copy of the referred-to study.

I am particularly interested in the basic assumptions of the study; how it relates to the pending legislation; and the extent to which its findings could or should be applied to the legislation before the Senate.

Mr. President, I sent that letter to Mr. Freeman and on February 18, 1974, I received his reply which says in part:

Members of my staff have had access to some working papers associated with the study but a completed draft has not been submitted to us. When it is the study will be reviewed by outside experts and will then be published. I therefore cannot supply you with a copy of the study because as far as I know it has not yet been completed even in a preliminary draft.

So the so-called unpublished study referred to in the Post article of February 16 does not exist in any authorized, finished, completed or evaluated form.

Does it relate to the pending legislation? Well, let me read from the last paragraph of Mr. Freeman's letter which reads:

> It was certainly not designed to answer the questions inherent in the emergency legislation before the Congress which I gather turns on judgments as to how long the emergency may last.

Mr. President, I ask unanimous consent that both of these letters be printed in the Record at this point in my remarks.

There being no objection, the letters were ordered to be printed in the Record, as follows:

COMMITTEE ON PUBLIC WORKS,
Washington, D.C., February 18, 1974.

Mr. S. DAVID FREEMAN,
Director, Energy Policy Project, Washington, D.C.

DEAR MR. FREEMAN: I understand that the Ford Foundation has funded, through your Energy Policy Project, a study by the American Public Health Association regarding health effects of energy by-products.

Recent news accounts of this study suggest that the report is directed to the matter of conversion of electric power plants from petroleum-based fuels to coal. Because the Senate will consider legislation tomorrow which would direct or permit certain limited conversions of this type, I would appreciate a copy of the referred-to study.

I am particularly interested in the basic assumptions of the study; how it relates to the pending legislation; and the extent to which its findings could or should be applied to the legislation before the Senate.

Thank you for your cooperation.

Sincerely,

EDMUND S. MUSKIE,
U.S. Senator, Chairman, Subcommittee on Environmental Pollution.

THE ENERGY POLICY PROJECT,
Washington, D.C., February 18, 1974.

Senator EDMUND S. MUSKIE,
Chairman, Subcommittee on Environmental Pollution, Senate Public Works Committee, New Senate Office Building, Washington, D.C.

DEAR SENATE MUSKIE: This is in response to your letter received this morning for a copy of a study of "Health Effects of the Various Forms of Energy" undertaken as part of the research for this Project by a Task Force of health experts assembled by the American Public Health Association. I am responding to your letter since the APHA officials are not available because of the holiday.

Members of my staff have had access to some working papers associated with the study but a completed draft has not been submitted to us. When it is, the study will be reviewed by outside experts and will then be published. I therefore cannot supply you with a copy of the study because as far as I know it has not yet been completed even in a preliminary draft.

The grant to the APHA was made in December of 1972 to undertake a comparative evaluation of the health effects of alternative sources of energy on the basis of available information. Our purpose was to provide such an evaluation as part of our Project's analysis of national energy policy options in order to give relevant weight to the important objective to protecting human health. The study was designed as part of the Energy Policy Project's objective of providing public information in the energy field. It, of course, had no relationship to any legislation and in fact was designed and well underway before the present emergency situation began in October of 1973.

It was certainly not designed to answer the questions inherent in the emergency legislation before the Congress which I gather turns on judgments as to how long the emergency may last.

Sincerely,

S. DAVID FREEMAN, *Director.*

Mr. MUSKIE. Mr. President, I would like to address myself now to what the Energy Emergency Act does with respect to the environmental issues which it raises.

As a result of discussions with the House conferees, it became apparent that it would be useful to clarify two provisions of the legislation relative to coal conversion and clean air. This attempt at clarification is, in part, a response to Senator Nelson's questions as to the length of time available to a converted powerplant to achieve compliance with applicable emission limitations.

I pointed out during debate that the maximum extension of time—the maximum—under the conference bill would be 18 months beyond current Clean Air Act deadlines—January 1, 1979 rather than July 1, 1977. The new conference report clarifies this question in two respects [Sec. 119 CAA]: First, it recognizes that coal converters which choose to comply with the Clean Air Act emission limits by use of low sulfur coal are required to achieve compliance with applicable limitations as soon as an adequate supply of coal of the proper sulfur content can be delivered. And may I say that the amount of low-sulfur coal in this country appears to be virtually unlimited. In other words, a utility choosing to use low-sulfur coal in a converted plant subject to the provisions of this section [Sec. 119(b) CAA] could not determine to wait until January 1, 1979, before that plant actually begins to burn low-sulfur coal. The Administrator would be required to cause that plant to begin to utilize complying coal as soon as a supply could be made available.

Priority consideration to use of low sulfur coal will reduce the likelihood of extended violation of applicable emission standards.

As to sources for which continuous emission reduction systems or scrubbers, as they are called, are required, the revised language requires that the facility achieve required levels "not later than January 1, 1979" but "by a date established by the Administrator." In addition use of the provision requires a showing that conforming coal is not available.

This change makes it clear that the Administrator has broad administrative flexibility to review a plan for compliance for each source subject to the provisions of this section. After a showing of unavailability of conforming coal—that is coal that would meet environmental standards—the Administrator must determine the availability of stack gas control technology to that source and establish a date by which that source must achieve compliance with the applicable emission limitations. The date for compliance could be any time between enactment and January 1, 1979, depending only on the time required to install necessary continuous emission reduction systems, but in no event could compliance be later than January 1, 1979.

This authority, combined with the authority to set priorities for the distribution of available continuous emission reduction systems and the Administrator's authority to fund advanced developments of stack gas control technology, combined with the Administrator's general responsibility to review the health impact of air pollutants and minimize disruption to the public health and welfare, should allay many of the fears of environmentalists in and out of the Senate concerned by the provision as initially drafted.

Finally, this provision [Sec. 119(b) CAA] has been clarified technically to assure that the emission limitation to be achieved is, in fact, that emission which the particular source in question would have been required to achieve had the implementation plan in effect or coming into effect not been delayed by this provision.

So the delay that is contemplated is a maximum of 18 months, and it could be substantially less.

The second clarification of the conference report relates to those facilities which take advantage of the extension of deadline as result of a voluntary conversion in an attempt to comply with the national effort to conserve petroleum fuels.

There were three questions related to voluntary conversion which the conferees wanted to clarify:

First, what constituted the beginning of voluntary conversion;

Second, whether voluntary conversions would be evaluated on a plant-by-plant basis; and

Third, whether a voluntary conversion would be automatically eligible for extension of deadline or whether such conversion was subject to the same case-by-case environmental balancing judgment as a mandated conversion.

On the first point, the conferees have attempted to establish that eligibility for extension of deadline as result of voluntary conversion must be the result of a considerably greater effort than a single solicitation of bids for coal. Not only must the effort have been directed toward conversion of individual plants, but other steps such as applying for an air pollution variance, obtaining a contract for coal, or making a substantial investment for conversion of the particular source must have been made for such source.

The Administrator would not be able to approve an extension of deadline for utility generally, but only for specific plants owned by that utility would qualify—the second point.

On the third point, the Federal Energy Administrator would be expected, in consultation and cooperation with the Environmental Protection Agency Administrator, to make a careful, case-by-case, balancing analysis of the eligibility of individual powerplants for an extension as a result of voluntary conversion. And the Federal Energy Administrator could not, according to my interpretation of **section 106** require conversion unless the purposes of the act so necessitated. This would mean that conversion under **section 106** can only be required as a result of fuel shortages.

The Administrator of the Environmental Protection Agency is expected to prohibit conversion under this section where there is a potential for endangerment to health. In these ways public health protection would be maximized while permitting use of coal, where appropriate, in lieu of petroleum fuels.

Additionally, the Environmental Protection Agency Administrator retains the authority for sources which convert either on a voluntary or mandatory basis to require the use of coal of certain grades, types and pollution characteristics. The Environmental Protection Agency Administrator should use this mechanism to limit high sulfur coal in highly polluted areas. Where necessary to assure distribution of such low sulfur coal, the Environmental Protection Agency Administrator must use his authority to require the issuance of exchange orders.

Mr. President, both the House and the Senate conferees were anxious to clarify these questions to remove any doubt as to the purpose of this provision—to assure that the public health would be minimally disrupted by the requirements of this act and to assure our colleagues of a continued commitment to environmental enhancement.

Mr. President, I shall be glad to cover further the points I have raised, if appropriate questions are raised.

I should like to concentrate now on the issues raised by the Post story, and by the concerns that that story may have generated in some of my colleagues.

Ever since we wrote the Clean Air Act of 1970, our preoccupation with the problem has been that our standard of performance must be that standard dictated by public health requirements. That is the foundation of the Clean Air Act of 1970. Notwithstanding the questions that have been raised about the pending legislation, in my judgment that standard is still held high by this legislation.

Let me make four or five points with respect to the pending legislation, to clarify that question.

First of all, no conversion is permitted by this bill, by its express terms, which presents "imminent and substantial endangerment" to health. **[Sec. 119(b) CAA.]**

Second, no conversion is permitted by the pending bill which "materially contributes to a significant health risk" deals with risks to health which are less severe than these specified by the Agency's "endangerment" regulation. What is intended is that "some violation of the national primary ambient air quality standards can be permitted so long as any of the public would not be exposed to significant health risks."

I submit, Mr. President, that that standard does not permit the kind of risk which is described in the first paragraph of the Washington Post story of last week.

The third point I make is that the owner of a conversion facility must first show that low sulfur coal which conforms to preconversion limits is not available before nonconforming coal can be burned.

The fourth point: The Administrator of the Environmental Protection Agency can require use of coal of particular pollution characteristics to reduce environmental risk.

Incidentally, I understand that 1 percent sulfur coal is in virtually unlimited supply in this country.

The fifth point I would make is that the Administrator of EPA can require redistribution of available low-sulfur coal to minimize environmental risk.

Finally, Mr. President, the Clean Air Act of 1970 as it is now written does not prohibit the use of coal. The Clean Air Act of 1970 as it is now written does not prohibit the use of scrubbers to clean up the emissions from the use of coal.

The Presiding Officer. The Senator's time has expired.

Mr. Muskie. Could I have 1 more minute? The Clean Air Act of 1970 establishes emission limits which are honored and protected by the pending legislation. The only slippage involved is a possible maximum of 18 months delay because of the time requirement to install the necessary hardware. I do not consider this a sweeping away of the safeguards of the Clean Air Act of 1970.

Mr. JACKSON. Mr. President, I again want to commend the distinguished Senator from Maine (Mr. Muskie) for his leadership in handling this most difficult part of the Emergency Energy Act. The cooperation of the distinguished Senator from Tennessee (Mr. Baker) and the Senator from Maine, with the chairman of the full committee to whom I am about to yield, Senator Randolph, has been one of the highlights of our working together.

The author of the energy study we are involved in, approved back in July of 1971, is the able and distinguished Senator from West Virginia (Mr. Randolph). I now yield to him and extend to him my deep appreciation for his outstanding leadership in the conference. It was a difficult one, especially after going through two rounds.

I yield to the Senator such time as he may require.

Mr. RANDOLPH. Mr. President, I rise to question the able chairman of the Senate Interior Committee as to **section 110** of the conference report as it relates to prices for oil from stripper wells. Under this provision, the President is authorized to establish ceiling prices for crude oil and refined petroleum products in order to prevent inequitable prices for these commodities. While in principle I support this temporary authority for the prevention of windfall profits through the establishment of ceiling prices, I am concerned for the possibility that a single uniform price may be established nationally for all domestic sources of crude oil.

I recognize that the conference report does provide the necessary flexibility to insure that this does not happen through the establishment of ceiling prices on the basis of individual production areas or fields.

Using this authority the President can establish maximum permissible prices for domestic crude oil which are actually variable in character. Within this framework, it is my understanding that the flexibility also exists to differentiate between oil from stripper wells and secondary and tertiary recovery and oil from other sources.

I read from the conference report:

> Categories which the conferees envision could be granted a ceiling price above the average ceiling price of $5.25, would be crude oil produced from stripper wells, oil produced by secondary and tertiary recovery, and other sources of crude which require higher prices to permit recovery of costs and to provide additional incentives to maintain production and stimulate new development.

There is general recognition that the 13 percent of the U.S. production which comes from stripper wells, which produce less than 10 barrels per day, is more costly to produce than oil from other sources. This was recognized by the Congress when the Emergency Petroleum Allocation Act was enacted on November 27, 1973. That Act exempted stripper well production from price controls. Reading from the conference report on S. 1570:

> Section 4(e)(2) states that the regulation promulgated . . . shall not apply to the first sale of crude oil produced in the United States from any lease whose average daily production of crude oil for the preceding calendar year does not exceed ten barrels per well. To qualify for the exemption . . . , a lease must be operating at the maximum feasible rate of production and in accord with recognized conservation practices.

Now, Mr. President, the Senate in approving the conference report may repeal this earlier distinction between stripper well production and other sources of oil. Three months after providing recognition of

the cost of stripper production through an incentive in the Emergency Petroleum Allocation Act, the Congress now intends to remove that incentive.

Stripper wells in the United States are operated by approximately 4,000 independent oil and gas producers and explorers. These small businessmen—the independent producers—are responsible for some 75 to 80 percent of the exploratory drilling in the United States to find new reserves of oil and natural gas.

In recognition of the increased cost of stripper well operations and secondary recovery, I would hope that the Congress would encourage the President to establish the ceiling price for oil from these sources at the maximum provided for in the conference report to accompany S. 2589. It would seem to me, and I am sure other Members of the Senate, that this distinction would be consistent with **section 110**.

Mr. President, I ask Senator Jackson, the manager of this conference report, to comment on the validity of the distinction I have set forth for stripper well production and secondary recovery sources when maximum ceiling prices are established by the President pursuant to **section 110** of the conference agreement.

Mr. JACKSON. Mr. President, I would be happy to comment on this question. On page 63 of the conference report, the conferees addressed themselves to the special cost problem of stripper wells. The Senator from West Virginia has read from page 63 of the report. I concur in his interpretation and the language of the report on stripper wells.

I would therefore reassure my distinguished colleague that the conferees fully expect that the petroleum price scheme established pursuant to this section will reflect the differential cost structures of different producers. It was clearly the intent of the conference that the price of stripper well oil be set sufficiently high to cover their higher production costs and to provide a reasonable profit. The conference report would do that.

Finally, Mr. President, may I merely add that when we discussed the stripper well issue in connection with the Alaska pipeline bill, I worked out a compromise amendment which was adopted. This amendment provided for the exemption from price controls of crude oil coming from stripper wells producing 10 barrels a day or less.

I agree with the basic philosophy here. Obviously there is a world of difference in what the price should be for a well that produces only 10 barrels a day and a well that produces 100 or 1,000 or 10,000 barrels a day. It is a question of cost. The distinguished Senator from West Virginia has addressed himself properly to that issue. That is why we have the certification requirement in here to make it possible for the administrator of the energy program to make necessary adjustments related to the cost. So there will be at least two tiers, and maybe more than two tiers of prices, in connection with the equity of taking care of those operators who have higher costs. Costs will vary, obviously, by the number of barrels being produced daily by a given well.

Mr. FULBRIGHT. I find this colloquy very interesting because my State has a large number of stripper wells and many of them, I may say, produce below 10 barrels. We have a lot of them closed down which are capable of producing 2, 3, or 4 barrels and which the operators already anticipate they might reopen at this $10 price.

I have had them come to see me and write to me. They want to know about the price. It is marginal as to whether they can afford to reopen them, clean them out, and get new pipes and new pumps. These wells have been closed down.

As I understand it, the $7.09 maximum has been testified to as being adequate. Frankly, I am not sure that it is. Some of the very small ones say it is not. It would be my purpose, if this conference report is enacted and they still say they cannot afford to produce at that price, to follow up on it. As the Senator from Washington has said, a third-tier price may be necessary for the very small ones, simply in the public interest. We need the oil. It is not a matter of trying to subsidize or enrich the owners. There are so many of these small stripper wells that they do not produce a sizable amount of oil, and it is in the public interest to have it produced.

I have said before that I am dubious about Congress setting prices in this or any other area, because it creates a certain rigidity that just does not work in our economic system. But, with the nature of the emergency, particularly with respect to propane prices, it is my intention to support the conference report. I reserve my right to disagree with the stripper well price provision. I plan to introduce a bill on the stripper matter separately.

Mr. JACKSON. I agree with the Senator.

I offered the exemption on the stripper well, and we were assured that the price would go up at the most a dollar, and it went from $3.90 to $10.35. I did not contemplate such a rise.

I am totally sympathetic with the stripper well problem. It is a problem that involves all elements of equity. I share the view of the distinguished junior Senator from Arkansas as well as the distinguished senior Senator from Arkansas, who has previously expressed his concern about this problem.

I believe that we have an equitable solution here, and we can review it and follow it and see what happens.

Mr. MCCLELLAN. I want to make the observation that, as my distinguished colleague has said, we do have wells in Arkansas that are capable of producing some oil. Some of them, as has been pointed out here, probably will not produce any oil even at this level. But this is a beginning, and this does insure production from a great many of them.

As my colleague has stated, if this does not reach far enough to get the other oil that is available, that is needed, we will simply have to reach down further later, to make possible the production of that oil. This oil is needed. As long as it is in the ground and as long as the opportunity is there to get it during this emergency, we should get that oil out of the ground.

Mr. JACKSON. I agree with the distinguished senior Senator from Arkansas as well as the distinguished junior Senator from Arkansas.

Mr. RANDOLPH. Mr. President, I think that the Senators from Arkansas are realistic about this matter. They are concerned, as many of us in this Chamber are concerned, with production from the so-called stripper wells as well as secondary and tertiary recovery. I repeat what I said in my earlier statement: There are 4,000 persons in this category—frankly, not all are companies.

Mr. FULBRIGHT. Just individuals?

Mr. RANDOLPH. No. These individuals are small business people. And they account for approximately 75 to 80 percent of the exploratory drilling in this country to find new reserves for oil and natural gas. Incentives are needed if these individuals are going to continue their exploration and development activities.

My esteemed colleague from West Virginia, Senator Byrd, and I, recognize the need for such incentives for stripper well production as well as secondary and tertiary recovery.

Under the conference report, in the State of West Virginia, when we talk about the maximum for stripper production it would come to approximately $8 a barrel, rather than just the $7.09 that is frequently referred to. It will vary in certain areas. The base price of May 15, 1973, plus the $1.35 incentive would bring it to $5.96. With the additional 35 percent, as many who I have spoken to have indicated, this would bring the maximum price to about $8 a barrel for stripper well production in West Virginia.

I have talked with literally dozens of concerned stripper well production people. They feel that they would like to and would have to have a higher price. The Senators from Arkansas, Senator McClellan and Senator Fulbright, also have addressed themselves to the matter of incentives. But there has been little realism on this matter until the present time.

Mr. President, I think the Senator from Washington (Mr. Jackson) is realistic and I think this is very important that we be realistic at this time. There is a flexibility in this provision, section 110, to deal with the special situation represented by stripper wells and secondary and tertiary recovery. In fact, this is reflected in the conference report.

Mr. JACKSON. The Senator is correct.

Mr. RANDOLPH. I ask the able manager of the bill how many provisions are in the conference report that we are attempting to cope with. One provides unemployment compensation for those persons who are dispossessed of jobs because of an energy crisis. How many provisions are there all together?

Mr. JACKSON. We have a long list.

I point out to the Senator that in addition to the pricing provision and the unemployment insurance, we provide legal protection for service station dealers. This bill prohibits the termination of franchises for both branded and unbranded dealers. This has been a serious complaint all over the country.

Then we require reporting of data that ought to be disclosed. Even now, the Government is in the position of not being able to tell us how much oil is coming into the country. And industry disagrees with the Government figures. Under this bill, we will have mandatory data disclosure.

Then there are provisions for adequate safeguards in connection with antitrust matters. Also, regular authority to mandate operating hours for gas stations—something that the whole country is up in arms about. No one knows what hours a given station is going to be open.

Then we have a long list of things, such as allocation of fuels and essential materials to fuel producers. We brought out yesterday that the major international oil companies have more than half of the avail-

able drilling equipment brought up, so the little independent cannot get it. Under this bill, there can be mandatory allocations of such essential goods. It would stop this hoarding.

Let me go on down the list. It covers some 10 additional items.

Mr. RANDOLPH. Including the conversion of oil and gas burning plants to the use of coal.

Mr. JACKSON. That is right.

Mr. RANDOLPH. Keeping in mind their environmental impact.

Mr. JACKSON. That is right.

Mr. RANDOLPH. Of the 46 generating plants on the east coast, some one-half of them can be converted with minimum environmental impact, without any health impairment. As of today, there have been 10 voluntary conversions. If this conference report is approved by the House, we will have the opportunity to look carefully into the environmental and public health impacts of these and any future conversions of other generating plants.

Mr. JACKSON. May I just say to the distinguished Senator from West Virginia (Mr. Randolph) that he has summed it up very well. This is an emergency bill. It will only last for a little more than a year. It will expire on May 15 of next year. We are dealing with an emergency.

If the country comes to the conclusion that all Congress can do is to bring in a conference report and refer it back—this has been going on since early in December—I think they are going to lose faith in our governmental institutions.

I feel very, very deeply that we have made a last-ditch effort to get the best bill we can get. This is a good bill. I do not agree with everything in it. Anyone who has ever been in conference never agrees with everything in a bill. I hope the Senate makes clear its position.

The Senator from Arkansas wishes to ask a question.

Mr. FULBRIGHT. I would like a clarification on the Senator's statement that the price could go above $7.09. In reading the description in the report, it would seem that $7.09 is the upper limit, but the Senator from West Virginia is saying under certain circumstances it is possible to go above $7.09.

Mr. JACKSON. The Senator is correct. May I respond that the $7.09 is an average figure. In the case of oil it depends on the grade of oil. There is sweet crude which is low sulfur and there is sour crude which is low sulfur; so that the price can go above, depending on the quality of the oil coming out of the stripper well and the location.

Mr. FANNIN. Would the Senator agree——

Mr. JACKSON. Just a minute. The Senator from Arkansas has the floor.

Mr. FULBRIGHT. I particularly appreciate what the Senator said, that these price controls are temporary. Fundamentally, I do not approve of Congress or any other legislative body setting prices in a free economy. Usually they are inflexible and I do not approve of them. I shall vote for this bill only because it is temporary. I am sure that events we cannot foresee may alter the situation. I shall vote for this bill only because there is an emergency, particularly with respect to the price of propane.

Mr. HASKELL. Mr. President, I would like to ask the distinguished manager of the bill a question. The distinguished Senator from West

Virginia referred to the stripper well situation and the flexibility provided for there. It would be my understanding that on new oil, that is, a new discovery of oil, the higher price of $7.09 per barrel could be granted by administrative action. I would like to get the reaction of the Senator from Washington to this situation. Assume that the President just decides to advance the price of old oil as well as new. As I read the conference report, this would be an unintended action as a matter of law. This type of action is not intended by the conferees. Would the Senator from Washington comment?

Mr. JACKSON. The Senator is correct. **Section 110** places on the President the specific burden, to justify in detail any crude oil price increases above the base. As discussed here, in the case of stripper wells a justification for such an increase could be made; this is a special situation but, that does not mean he could arbitrarily and capriciously raise it up to $7.09. He has to make detailed findings in accordance with **section 110**, and that is submitted to Congress.

Mr. HASKELL. I assume the Senator would concur it is probably desirable for newly discovered oil to have a different price than old oil.

Mr. JACKSON. That is correct.

Mr. HASKELL. The idea is to increase production.

Mr. JACKSON. The senior Senator from Arkansas has clarified the question.

Mr. MCCLELLAN. I understood the junior Senator from Arkansas to say that it is not anticipated that the price will be increased to $7.09 for stripper wells.

Mr. JACKSON. Prices for stripper wells could be raised to $7.09 where justified; but the Senator from Colorado is asking the question as it relates to oil generally.

Mr. HASKELL. It would be clearly improper. However, an advance in new stripper oil would be quite proper.

Mr. JACKSON. The Senator is correct. The Senator from Colorado agrees with both Senators from Arkansas on this point.

Mr. HASKELL. I do. I thank the Senator from Washington.

Mr. President, I ask unanimous consent that a brief statement I have prepared to be printed at this point in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR HASKELL

The Interior and Insular Affairs Committee conducted three days of hearings on proposed legislation introduced by the Chairman of the Committee (Mr. Jackson) which provided for a roll back of crude oil prices.

The Chairman and his colleagues in the conference deliberations on S. 2589, the Energy Emergency Act, used the expertise gained in those hearings on drafting the price roll back provisions contained in the conference report.

As a member of the Interior Committee I was privileged to sit through those hearings and to gain a new insight into the current pricing situation.

In short, it is a mess. Even the so-called experts cannot agree as to what course should be followed. It is clear there is a need for action and that the Administration has not been willing to exercise the authority already given them to control crude oil prices.

Let me cite two particularly blatant examples of statements by knowledgeable witnesses who appeared before us which I believe show the need for the Congress to take action immediately if the situation is to be controlled.

Two representatives from the Federal Energy Office appeared before us. The Assistant Secretary of Treasury for Economic Policy, Mr. Fiedler, appeared,

along with Mr. Gerald Parsky, Executive Assistant to the Administrator of the Federal Energy Office.

I asked Mr. Fiedler: "How far would you roll back the present price that I gather today is $10.25 on new oil?" He replied:

"My concern is primarily with the price of all oil because this is a function of conservation that depends on the price consumers are paying and they are paying a price of imported and domestic, not only new, but the old as well and stripper.

"I don't have a specific number in mind, but I think that the $5.25 price that Senator Jackson mentioned earlier, rolling all oil prices back to that level, would be disastrous."

Mr. HASKELL. "To what level?"

Mr. FIEDLER. "To the $5.25 Senator Jackson mentioned earlier."

Mr. HASKELL. "Do you have any opinion at all as to where it should be rolled back to?"

Mr. FIEDLER. "Not any specific number."

I interpret that as an indication that Mr. Fiedler—one of those responsible for determining the Administration's policy with respect to oil prices—has no opinion whatsoever as to what those oil prices should be.

Let me contrast his statement of no opinion with the statement made by Mr. Parsky:

Mr. PARSKY. "We would agree that the average price of $9.50 or so is too much too fast, no question about that. We are now in the process of studying the pricing situation and trying to carefully assess the economics of secondary and tertiary recovery as well as the economics of operating stripper wells in order to come up with an accurate level that can continue to increase supply."

Later on he stated:

"The intention at this point would be, or at least all indication that we have are the $5.25 on old oil is sufficient."

I cannot stress too strongly that the Administration's designated spokesmen, in an appearance before the Interior and Insular Affairs Committee, testified that a price of $5.25 on old oil—the price contained in the Conference Report—is sufficient. Now they are lobbying actively to have the bill defeated by sending it back to the Conference Committee.

Let me set forth another example of contradictory testimony before the Committee.

Mr. C. John Miller, President of the Independent Petroleum Association of America appeared and stressed the importance of the small businessmen in the oil industry. He stated:

"Much of the public attention on oil prices, oil profits and oil taxes during recent weeks and months has centered on a handful of large international oil companies. This has obscured and overlooked the fact that some 10,000 small businessmen—the independent producers—are responsible for 75 to 80 percent of the exploratory, or wildcat drilling directed at finding new reserves of oil and natural gas in the United States.

"The increases in domestic crude oil price, however, have increased U.S. exploration and development and we are convinced will result in increased supplies for consumers."

Mr. Miller then goes on to atttempt to explain the Independent Petroleum Association analysis of oil prices which are necessary to keep U.S. exploration and development healthy and expanding. He explained:

"Using the 1973 price of crude oil, the IPAA analysis, in terms of constant 1973 dollars, shows that an average price of about $6.65 per barrel for crude oil for all domestic crude oil would be required over the long run to achieve 85 percent self sufficiency in oil and gas by 1980, and $8.40 for 100 percent self-sufficiency."

Keeping that $6.65 per barrel price in mind it is appropriate to look at the current price situation to determine the effect of a price roll back.

The IPAA analysis of the current supply situation is that we are currently getting 24.6 percent of our available crude from imported sources which are priced at $10; new production represents 18.8 percent, also at $10; old production represents 56.6 percent at a $5.02 average. The current supply—as of the date of Mr. Miller's statement—ends up with an average price of $7.18 per barrel. That price of $7.18 per barrel is far above the $6.65 per barrel price IPAA believes is necessary to achieve 85 percent self sufficiency.

Their assessment of what would happen if new oil is controlled at or near a $7 level—a contingency which is clearly provided for and intended in the Energy Emergency Act Conference Report—indicates that the $7 price is both possible and desirable. Mr. Miller stated, "If we were to consider the roll back of new oil to the $7 level and go through this same mathematical sequence (described above) we would end up with the average price of supply at $6.617."

That price is within four cents per barrel of the price desired by the original IPAA analysis to obtain a high degree of domestic self sufficiency. It is certainly much more in line than the $7.18 per barrel average. And with new and stripper oil prices skyrocketing that $7.18 per barrel average is likely to increase dramatically in the coming weeks and months if we don't force reasonable price controls to be implemented.

It is amazing to me that the IPAA can ignore the implications of their own statistics and lobby against this legislation.

As a final note I would like to quote a statement made by Federal Energy Office Administrator Simon in a press conference which he held January 23, 1974. He stated:

"Now, as far as $5.25 is concerned, that has presently generated enough exploration in this country and is giving the incentive to go out and bring on all this addition exploration and production that we need to get the job done."

Mr. FANNIN. Very well; on my time. Why does the Senator set the price of $7.09 when the chance of its going to $7.09 is minute? This is an emergency bill. It will create a real emergency, I think we ought to have the facts. When he says oil could go, under this legislation, to $8, he knows that that is not so.

Mr. MCCLURE. Mr. President, I should like to point out to the distinguished Senator from West Virginia (Mr. Randolph) that this provision [Sec. 110] would tear the heart out of the stripper amendment. With litigation and with hearings that will take place, there is no opportunity that $7.90 will even be realized prior to the termination of the act. In addition, we have money now being spent on stripper wells with the $10.25 being reduced to $5.25. This will result in a reduction in the takeover of many stripper wells.

Mr. GRAVEL. Mr. President, I simply want to underscore the statement made by the distinguished Senator from Arizona; that is, in the effort to handle the emergency, we are going to be creating a worse emergency. I would hope that the distinguished junior Senator from Arkansas (Mr. Fulbright), for whom I have great respect, would really harken back to his experience in economics. What the bill will do is to create an emergency unparallel in our history. There is no way to extricate the emergency problem over short run from the longrun problem. The longrun problem is that we cannot solve the situation without having more oil.

When we talk about rationing and allocation, we are really apportioning the burden, as everybody must know. If we are to lift the burden, we have to do it by increasing the flow in the marketplace, so that we can increase production.

The Senator from Arkansas is very knowledgeable in foreign affairs. Maybe he can explain to me why, if he and I had a million dollars, and were going to invest that money—and we are oil people—why should we invest the money in Arkansas, Alaska, Texas, or Oklahoma if we can take the same million dollars and go to Indonesia, or the Northeast, or the Middle East, and produce oil and sell it at $10 a barrel, rather than being restricted to a price of $5 in this country? We can pass all the laws we want to about gravity or economics, but it will be to no avail.

So we are going to pass this bill today, but I promise you we will be debating this matter 6 months from now, and the lines at the gas stations will be twice as long as they are now.

Mr. GRAVEL. And whom are the people going to blame? If Senators think we are low in the polls now, hang on, because we cannot solve the problem by shrinking the supply. That is exactly what this legislation does. It chases capital out of this country to other places. In point of fact, it causes inflation, because as we shrink the supply in the United States, we push up supplies abroad. So we will not be buying oil at $10 a barrel; we will be buying it at $15 a barrel and we will have an outflow of dollars that will place our economy in jeopardy, if not in bankruptcy.

Mr. FULBRIGHT. There is only one possible way in the short term to get relief, and that is to settle the war in the Middle East.

Mr. GRAVEL. If I could disagree with my colleague, that is absolutely the worst thing that could happen, because if the Arabs lifted their embargo, the crisis would subside and we would continue to send the dollars abroad.

We will be sending abroad in 1980 $20 billion a year, and nobody has an answer for this overflow of capital. Our monetary system will be controlled in Zurich by the Arabs or anybody who has the American dollars. Is that what my colleague is seeking?

Mr. FULBRIGHT. I said short term.

Mr. GRAVEL. The short term problem is the same as the long term problem. The only reasons we have a shortage of energy is that we do not have enough oil. We are asked to pass legislation that will add to the shortage. It is simple economics. A shortage increases prices. If we want to bring the price down, we do not do it by legislation; we increase the supply. What we have to do in this country is increase the supply of oil, and the price will come down.

Let us look at the record. From 1952 until 1971 the price of oil, in constant dollars, had gone down. In 1958 the price was $2.80 a barrel, in constant dollars. The price of oil had gone down. Does the Senator know what followed that? The money was not spent for exploration. The American public said: "We do not want to invest our money in gas and oil, because it is not profitable."

This conference report has many good features. One is unemployment compensation. The only problem is, it is not large enough, because, if this measure passes, we will have to treble and to quadruple it. This bill will put people out of work.

Mr. BARTLETT. Mr. President, I ask unanimous consent to have printed in the Record an editorial, letter, and fact sheet.

There being no objection, the material was ordered to be printed in the Record as follows:

POLITICIANS LACK THE COURAGE TO LET A FREE OIL MARKET WORK

The present political climate in Washington makes tight price controls and a rollback for domestic crude seems tragically inevitable.

Congressmen are vociferous in denouncing "$10 oil." Federal energy officials, pressured to act, are entangled in jerry-built statutes and are asking for clear-cut sweeping authority over oil prices.

The situation is a classic example of the headaches involved in political attempts to tinker with prices of a basic commodity. It is the best argument possible for permitting a free market to determine prices for oil.

The contradiction of "old" oil selling for a $5.25/bbl while "new" and "stripper" oil commands a $10-plus top was predictable under a two-tier price structure. Unequal price pressures were bound to rise with old oil under controls but with new production freed by administration edict and stripper output freed by act of Congress. The unrealistic rules invited some unrealistic prices.

These prices still aren't as unreal as critics say "$10 oil" is actually an overstatement. Average price for free oil is only $9.50 by government calculations; and since it represents only about a fourth of domestic oil, average price for all oil is $5.95.

The two-tier structure, despite its faults, has proved a point. The higher prices of free-market oil have forced a more realistic evaluation of controlled prices for old oil and also excited industry interest in new supply throughout the oil country, plans are being made for reconditioning wells and for drilling wells and for drilling and developing new production. Capital budgets have been increased enormously. New supply from these sources—given time—inevitably will soften high prices. The politicians obviously aren't willing to wait for this correction.

The danger of a price rollback now is that it may destroy new incentives for increasing domestic supply which ultimately is the route to greater energy independence.

Federal energy officials want to restore a single structure by ending the free market for new and stripper oil. Whether this will prove a disaster by killing off the budding oil-country activity depends in part on how tight the politicians screw the price clamp. The uncertainty it poses for future prices could have just as deadly an impact.

The guiding principle still must be a price high enough to attract new effort and investment in expanding the supply of petroleum. The workings of a free market could eventually adjust to such a price. It's doubtful that price controllers, no matter how well intentioned will be allowed to set such a price.

Only a single price structure free of artificial controls makes sound economic sense. The consumer will be better served in the long run by toughing out a period of high prices in order to get more supply. His choice really is: high prices with more oil or lower prices with less oil. The politicians apparently haven't the courage to accept this fact.

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA,
Washington, D.C., February 14, 1973.

The Honorable DEWEY F. BARTLETT,
U.S. Senate,
Washington, D.C.

DEAR DEWEY: This is to express our deep concern about the rollback of *domestic* crude oil prices as proposed by Senator Jackson in the Emergency Energy Act (S. 2589).

In our opinion, the proposal would cause a drastic curtailment in exploration and development of domestic reserves forcing U.S. consumers to become more dependent on imports which cost from $10 to $20 per barrel about twice as much as the average for domestic crude oil. Because of the improved prices for crude oil that occurred in 1973 there has been a very substantial and widespread reactivation of independent explorers and producers, as has not been witnessed in more than 15 years. The Jackson proposal would apply to "new" oil and stripper well production. The Cost of Living Council exempted "new" oil from price controls and the Congress exempted stripper well production for the sole purpose of permitting the market place to stimulate domestic exploration and production. This is now working most effectively and the average price of this exempted oil is only $9.50 per barrel, well below the price being paid for imports which would continue to be passed on to U.S. consumers.

We also submit that Senator Jackson is completely wrong in holding out to the U.S. consuming public that his proposal will bring about a meaningful reduction in consumer prices. His rollback applies to only 15 percent of total oil supply from both domestic production and imports. At most this could mean about 1 cent per gallon reduction on all oil products. This savings would be temporary because domestic exploration and production will be reduced, aggravating existing shortages and necessitating an increased use of far higher priced imports.

Furthermore, the domestic production that is rolled back is primarily owned by independents who do most of the exploratory drilling. They would thus be denied funds vitally needed to expand domestic exploration and development.

For your further information there is enclosed a fact sheet on this matter.

Very best regards.

Sincerely,

L. DAN JONES.

FACT SHEET ON CRUDE OIL PRICES

A rollback of domestic crude oil prices, as proposed by Senator Jackson, would result in less U.S. oil and gas supplies, increased dependency on higher cost foreign oil and higher prices for oil products to consumers.

During 1973, the government permitted the price of U.S. crude oil to rise. According to the Federal Energy Office, the average price of controlled domestic crude oil is $5.25 per barrel; the average price of uncontrolled crude oil which includes new and stripper production is $9.51 per barrel; and the average price of all domestic crude oil is $5.95 per barrel.

The increased prices have brought forth an increase in the activities related to domestic petroleum exploration. The number of active rotary rigs at the end of January 1974, for example, had risen by 12 percent over the same period in 1973. Although there is a time lag between increased exploration and production there is some evidence already that domestic supplies are being increased. U.S. crude oil production declined steadily from 9,637,000 barrels daily in 1970 to 9,077,000 in September 1973, a decrease of 560,000 barrels per day. This trend has been reversed and preliminary figures indicate that production in January 1974 was approximately 9,200,000.

A price rollback hurts the independent producer to a far greater degree than the major oil company. This is so because independents drill 80 percent of exploratory wells and it is estimated that they operate 80 percent of the stripper wells. Most of the oil which the major oil company sells is "old" or controlled oil. But the price rollback would only apply to new and stripper well oil.

To approximate the financial loss to the independent due to this rollback, new and stripper oil produced by independents constitutes approximately 1.9 million barrels of the 9.2 million barrels of oil produced each day. The price of this oil would be rolled back from $9.51 to $5.25 per barrel, a reduction of $4.26 per barrel which would deprive the independent segment of over $3 billion per year, a large portion of which would be spent on domestic exploration and development.

The professed reason for the rollback is to save money for the consumer through lower product prices. The rollback would apply to only 15 percent of total supply (domestic and foreign) and could only result in temporary savings to consumers of about 1 cent per gallon on all oil products.

There has been understandable concern as to increases in price of oil products to the consumer and speculation that we may be facing gasoline prices of 75 cents or even $1.00. In this regard, it is pertinent to keep in mind that the current average price of domestic crude oil is only some 6 cents a gallon over the 1972 price. Obviously, since the average price of gasoline in 1972 was 36 cents, domestic crude oil prices have not been, and will not be, the cause for 50 cent, 75 cent, or $1.00 prices for gasoline. Sharply higher gasoline prices can be attributed to high prices of imported foreign crude oil ranging in price from $10.00 to $20.00, and higher charges for refining and marketing, not domestic crude oil prices.

A rollback of domestic crude oil prices would not solve the problem of increased prices for gasoline, home-heating oil, jet fuel and industrial fuels. By reducing domestic supplies of crude oil, the rollback would result in increased dependency on foreign oil and higher prices for oil products to consumers.

Mr. PEARSON. Mr. President, in these days of debate over price gouging and price rollbacks, excess profits and excess profits taxes, the Senate must not lose sight of the objective of the energy legislation we consider today. Our goal is to insure that the people of this Nation have adequate supplies of energy and reasonable prices. We are not here to punish oil companies nor are we here to promise the American people plentiful supplies of cheap gasoline.

To achieve our objective, we must write legislation which strikes an equitable balance between the returns on investment which are needed

to encourage energy production and the prices consumers can afford to pay for gasoline, home heating oil, and other energy resources. Our task is not easy. The economics of energy production and distribution are incredibly complex, but I believe that we can identify basic standards which the legislation we consider today must meet.

First, the provisions of this bill should reflect the limited choices available to us in the short run. We can marginally increase imports from some foreign sources and we are doing so. We can utilize energy more efficiently, and we are doing that. But a most important part of our short-term efforts to fill the gap between our energy needs and energy supplies must come from domestic petroleum resources which are already developed or which can be developed quickly.

In this domestic production, independent oil producers play a vital role. We must carefully consider the impact of any legislation on their ability to fully utilize existing reserves and to develop new oil fields.

Also in the short term, the major oil companies should bear most, but not all, of the burden of price increases which are directly attributable to the Arab oil embargo and OPEC price increases. The majors must accept responsibility for short-term dislocations caused in large part by overdependence on foreign oil and inadequate investments in domestic resources. These major oil companies made the decision to invest in foreign oil and should bear responsibility for the results of the investments. Therefore, on the short term, the major oil producers should not be permitted to reap excess profits, and they should not be allowed to pass through all cost increases of foreign oil to American consumers.

In the long run, the Congress and the American people must face the fact that we cannot amend or repeal the laws of supply and demand. If American consumers are to have an adequate supply of petroleum products, producers must have a reasonable return on their capital investments—reasonable, not exorbitant. Legislation which discourages investment in energy resources will ultimately lead to insufficient production and higher prices.

The legislation we consider today, the Energy Emergency Act, has numerous provisions which will help us to manage our energy problems and to meet our long-term energy needs. But one provision, **section 110,** must be carefully examined to determine whether it meets the basic tests I have outlined.

Section 110 would roll back prices of domestic crude to a maximum of $7.09. **Section 110** would not regulate the price or supply of imported petroleum products.

On the short term, a price rollback of this magnitude would, in all likelihood, have an adverse impact on supplies of domestic oil. Some stripper wells now producing may not be profitable at lower prices. Many marginal wells which could be uncapped and brought on stream at higher prices will remain capped. Exploration for oil in high risk areas will not be profitable. We would do the American consumer no favor if we would enact legislation which leads to reduced production at a time of acute energy shortage.

The long-term impact of **section 110** is much more difficult to judge. If the eventual equilibrium price for crude is above the price established under authority granted by **section 110,** it would have an adverse **effect on domestic** production of oil. If the equilibrium price is less

than the price established by the Administration, then the American consumers would be paying more for oil than they should. The point is that nobody can presently calculate the long-run equilibrium price of oil nor can they determine the long-run impact of **section 110.**

Mr. President, I shall reluctantly vote to recommit the Energy Emergency Act. I say reluctantly because this bill contains provisions which should be enacted if we are to meet our energy problems. However, in my judgment, **section 110** has failed to meet either the short- or long-run objectives of insuring that the people of this Nation have adequate supplies of energy at reasonable prices.

Mr. WILLIAMS. Mr. President, I rise to express my wholehearted support for approval, without any further delay whatsoever, of the conference report on S. 2589, the Energy Emergency Act.

If ever a piece of legislation deserved to have the overused word "emergency" in its title, this bill does. The shortage of petroleum products has become a nationwide fact of life and, in many areas of the country, a true emergency. Nevertheless, this "emergency" bill, drafted to deal with an "emergency" need, has been languishing in a legislative pigeonhole for more than 8 weeks! This is a reprehensible record which must be set right immediately.

Mr. President, before the Senate began the recent Washington's Birthday recess, I rose to make clear my dismay that we had not first acted on this conference report. I must reiterate today what I said then—the tactics employed by opponents of this legislation to delay action on it are simply inexcusable.

In the short time we were in recess the ripple effect of the fuel shortage has spread rapidly across the Nation. I believe that some States which were previously virtually untouched are now having to come to grips with the full impact of this situation. Others which are today still exempt from the most serious ramifications, will certainly begin to feel them very soon.

My own State of New Jersey is still in the grip of what I have previously described—and must continue to describe—as a gasoline crisis. I am somewhat encouraged by the apparent success of Governor Byrne's forthright action to allocate gasoline sales on an odd-even day basis. Furthermore, I am most heartened by reports that New Jerseyans have responded in an outstanding manner to comply with this program; they have overwhelmingly shown they are willing to sacrifice some individual inconvenience for the common good. And finally, I believe the combined efforts of New Jersey's congressional delegation and the Governor have finally succeeded in prying loose additional fuel to make New Jersey's allocation more equitable.

Nevertheless, New Jersey—and a rapidly increasing number of other States—is still in very serious trouble.

The true, and as yet largely unexplored dimensions of the emergency facing us were brought home to me just 1 week ago. Last Tuesday, I charged a hearing by the Subcommittee on Labor in Trenton, N.J., to explore employment dislocation effects of the energy crisis. The testimony we heard was most disturbing.

For example, Joseph A. Hoffman, New Jersey commissioner of labor and industry, told us at least 11,000 New Jerseyans were out of work during the first week of this month as a direct result of energy shortages. And he stressed the fact that this was only a partial report, and the actual total could easily be 50 percent higher.

Another witness, Mr. Jack W. Owen, president of the New Jersey Hospital Association, told us of surgeons who have run out of gas on the way to operations; of patients unable to reach hospitals for treatment; and of truckloads of medical supplies prevented from reaching their destinations.

As I have already mentioned, our Governor and other State officials are doing everything they can to respond to this emergency. I am sure that other members of the Senate have directed their staffs, as I have, to provide all the help they can on an emergency, case-by-case basis.

But what we really need is the kind of coordinated, comprehensive response that can only be mounted on a nationwide basis. At our hearing last week, virtually all of the more than 20 witnesses made impassioned appeals for effective leadership by Congress. And I think Commissioner Hoffman underscored the urgency of these appeals when he declared:

> It goes without saying that unless constructive action is taken, a serious situation can very quickly become a desperate one.

Mr. President, the legislation before us today represents the kind of constructive action that is needed. It is the kind of a bill that makes me proud of the leadership of this Senate. And I would point out that until we became bogged down on final approval of this conference report, this Congress had literally been years ahead of the administration in recognizing the developing threat of energy shortages.

The legislation before us today is a solid bill shaped by the tireless efforts of some of the most able Members of Congress. It would establish the necessary administrative framework to deal with the energy crisis; it provides the specific legislative authority to effect maximum conservation of fuel supplies; it authorizes whatever steps may prove necessary to equitably and effectively distribute those resources we do have; and it provides additional assistance for the victims of the shortage.

Mr. President, the contents of this bill are well known to every member of this body and I will not take the time to go over them again. Also well known to all of us is the single issue that has delayed final approval of this measure—the ceiling and resulting rollback in petroleum prices.

In my judgment, there can be no doubt that legislation is needed to slow down the skyrocketing cost of oil and oil products. Certainly, we all agree on the need for incentives for additional oil exploration and development. But that does not mean we should simply abandon the American consumer and allow him to be bled dry by unconscionable prices.

The staggering profits being reported by virtually every oil producer make it crystal clear that the oil companies are prepared to charge whatever the market will bear. And in the light of the crisis that now confronts us, the market will bear a high price indeed. But the burden of paying that price will fall most inequitably on the American people. And those least equipped to bear it, will be crushed by it unless this Congress offers them protection.

The petroleum price ceiling contained in the conference report on S. 2589 would provide the necessary protection, while allowing producers a reasonable return on their investment. It has been carefully drafted after a great deal of hard work by very able Members of this

Congress. It is both equitable and workable, and merits the approval of this body.

Mr. President, we can afford no further delay in approving this conference report. The demand for action from the American people is clearly demonstrated by the thousands of letters which I, and I am sure most other Senators, have received.

We must not vote to recommit this bill to Conference Committee. We must vote to make it law.

I can only join with one of my constituents, a man from Stockton, N.J., who asked me in a letter—

Isn't it about time for the Senate to act on the energy crisis?

Mr. WEICKER. Mr. President, I am compelled by two serious reservations to vote today to recommit the emergency energy conference report.

First, I am deeply concerned by certain provisions in the conference report authorizing the relaxation of clear air standards, as established by the Congress in 1970. **[Title II.]**

Time and again I have stated my opposition to using the energy crisis as an excuse for relaxing auto emission standards. **[Sec. 202(b) CAA.]** Progress on the energy front must not be made at the expense of vital progress in protecting our Nation's health.

Auto emissions are responsible for 70 percent of air pollution in our urbanized areas. By authorizing a further delay in the implementation of statutory auto emission standards, the conference report would take a step backward in the concerted program to remove harmful pollutants from the air.

In addition, the conference substitute language would allow the Environmental Protection Agency to exempt certain electric powerplants and other industries from air pollution regulations for the next 5 years. **[Sec. 119 CAA.]** This provision would clearly compromise a hard-fought national effort to improve the quality of our air. Especially in the densely populated regions of the Northeast, a severe health problem would be created. In fact, one study by the American Public Health Association has estimated that such a conversion would cause a 20-percent increase in both morbidity and mortality due to respiratory and cardiovascular diseases.

To weaken the Federal commitment to clean our air without more thorough analysis would represent an irresponsible and untimely action by the Congress.

Second, and most importantly, I am not satisfied with the broad and permissive grant of authority to the President relative to rationing. **[Sec. 104.]** Earlier today I introduced legislation mandating the President, upon consideration of various alternatives, to implement some form of gasoline rationing within 30 days of enactment of the bill. It is time for Congress to face the severity of the gasoline shortage and tackle the tough policymaking issues, rather than abdicate more and more authority to the President.

During the debate on the emergency energy bill late last year, I, along with 39 other Senators, voted in favor of mandatory rationing. Since that time, we have witnessed severe spot shortage and panic buying in various regions of the country as a result of a fragmented State-by-State approach to a national problem. Effective national leadership is essential to insure an equitable sharing of the burden.

The time has come to understand that this is a national crises and it requires a national solution.

An effective rationing program would allay the fears of motorists reacting to uncertain conditions. I am confident the American people can comply to a uniform rationing scheme, just as they adjusted their lifestyles in response to governmental appeals to conserve fuel supplies. But so long as we sacrifice pollution standards and fail to take positive action for gas rationing, I cannot support the Emergency Energy Act conference report.

Mr. BELLMON. Mr. President, today's vote in the Senate on the conference report on the proposed National Energy Emergency Act could be one of the most important votes of this session, or of any session. It could very well determine whether this country achieves energy self-sufficiency, or whether our citizens face an endless period of shortages and probable rationing of fuel.

If this bill should pass in its present form, with the rollback on the prices of domestic crude oil, residuals and products [Sec. 110], it virtually guarantees that this country is going to be short of fuel from now on. It further guarantees that we are going to be increasingly dependent upon the Middle East for whatever crude we can get from those countries.

According to a knowledgeable source in Oklahoma, a rollback of domestic crude oil prices at this time would produce these results:

A substantial number of wells would be plugged and abandoned as unprofitable at the rolled back prices, causing loss of vitally needed barrels of crude that will never be produced.

Drilling operations and additional recovery programs which are now being expanded because of an improved price incentive would be severely curtailed.

The already critical energy shortage would be greatly intensified with further and serious economic detriment to the Nation as a whole. In addition, the dependence of the consumers of this Nation on imported crude oil would increase considerably, and the unreliability of such dependence has been amply demonstrated in the last few

In effect, imposing a rollback on our domestic oil producers would be more disastrous than any Arab oil embargo, because it would choke off the capital which is needed to expand exploration efforts and develop the potential new sources of energy which we have in this country. I refer to the production of synthetic crude oil from coal and oil shale at the prices set in this bill no invertor will seriously consider building the multimillion-dollar plants needs to produce the synethetic oil this Nation must have.

In all probability, what this bill ultimately would mean is the nationalization of the energy industry in the United States, because under this kind of legislation the private sector probably could never meet our country's energy requirements. If the private sector fails because of congressionally applied hobbles here would likely to be a move to get the Government to take over.

Mr. President, it is difficult for me to believe that even the most frustrated motorist waiting in line at the station to pay 50 cents a gallon for gas wants that to happen. It is better to have 50-cent gasoline today than no gasoline tomorrow.

If there ever has been a bill before the Congress that it was important to have defeated, it is this bill, and I strongly urge that the conference report be recommitted.

Mr. President, let me emphasize that Oklahomans—and that certainly includes the Senator from Oklahoma—are concerned about solving the energy crisis. Within the past few days, I have been provided with a report from the Oklahoma Energy Advisory Council, which was composed of 180 citizens of my State, of which only 26 were associated in any way with the oil and gas production business. This citizen-member council studied the various problems of energy production, transportation, distribution, importation, exportation, refining, and consumption. They concluded that the present energy shortage is not contrived, but real, and that today's crisis was brought about by a supply and demand imbalance that has been "severely irritated and disrupted by governmental policies and action here and abroad," to quote the council chairman, Robert A. Hefner III.

Mr. President, within recent weeks two other bodies of public opinion in Oklahoma have come forth with recommendations relating to the energy crisis, stressing the need for incentives for our energy producers. I ask unanimous consent that a resolution adopted by the Oklahoma State Senate and a list of recommendations from an energy policy statement adopted by the board of directors of the Oklahoma State Chamber of Commerce be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

A Crisis That Dictates Action

The gravity of the energy crisis is such that the people of Oklahoma and the Oklahoma legislature should memorialize Congress to take the following action immediately:

1. *Extension of offshore leasing to Atlantic and Pacific areas.* Since the outer continental shelves of the United States have reserves estimated at 190 billion barrels of oil and 1,100 trillion cubic feet of natural gas, more frequent and larger lease sales should be scheduled for exploratory and development drilling—including tracts off the Atlantic and Pacific Coasts.

2. *Incentives for construction of needed refining capacity.* The equivalent of sixty 150,000 barrels per day refineries are needed between now and 1985 to help heat America's homes, fuel our vehicles and operate our factories. Support should be given in making this increased refining capacity available to help alleviate the energy shortage.

3. *Deregulate the price of natural gas at the wellhead.* Natural gas supplies one-third of our nation's energy—heating half our nation's homes, fueling 49 percent of industrial production and producing 25 percent of the nation's electricity. Gas requirements by 1990 are expected to be nearly double what they are today. Yet, there has been only limited economic incentive to explore for and develop new reserves of this energy component.

It is a historic fact that Federal regulation has since 1954, kept the price of natural gas at unrealistically low levels compared with equivalent energy units derived from other energy types. Demand for cheap and clean natural gas has spiraled—creating a wide breach between supply and demand. As a result of regulated prices, return on capital invested in the exploration for the development of new gas reserves as has been below that of average industry profitability and interest on long-term corporate bonds.

Oklahoma's 12,000 square mile portion of the multi-state Anadarko Basin, the Arkoma and other deep basins should be developed as the State's more prospective and known gas reserves. The Anadarko Basin reserves are estimated at 30 trillion cubic feet of gas. High cost of drilling to these deep reservoirs is staggering. Necessary exploration and development efforts have been perverted by Federal control of gas prices at the wellhead. The incentive of a free market for

natural gas is necessary if these reserves are to be brought into production. Economic benefits from multimillion dollar exploratory and development programs will sustain the Oklahoma economy and provide additional supplies for the needs of our citizens.

Increased prices to the consumer would result, but studies indicate that the economic impact on the consumer would be neither sudden nor large. We agree that increased earnings resulting from price deregulation of gas should be utilized to provide additional supplies from domestic resources.

4. *Continue the depletion allowed on oil and gas.* Maintenance of this and other incentives for high cost exploration and development are necessary for an expedited program of drilling for oil and gas.

5. *Inaugurate an investment credit on basic capital* invested in such energy producing activities as secondary and tertiary projects and production increasing remedial work on stripper well leases. This incentive is vitally needed in Oklahoma, where known reserves subject to secondary and tertiary recovery are estimated at 10 billion barrels. (This is exclusive of heavy oil and tar sand reserves.) Seventy percent of Oklahoma's oil wells are stripper wells, producing an average of less than four barrels daily. Production from these wells represents 40 percent of the State's total oil output. The potential for more production from these wells through remedial, rework and infield drilling lies in increased oil prices and other incentives.

6. *Rescind Phase IV controls.* These and predecessor controls have created unexpected shortage of all kinds. Typical is the shortage of drilling pipe, casing tubing and some other rig components used in drilling wells. This shortage has materially affected the drilling of wells in the past few months. Some of the available supplies are being exported because prices are better outside the U.S.—due to Phase IV controls. Industry, labor and the consumer, alike, are asking Congress to take this action, the U.S. Chamber reports.

7. *Air pollution and health/safety regulations should be carefully administered.* This care should be taken to avoid imposition of unnecessary economic costs and restrictions on industrial maintenance and development. They should be directed toward minimizing real hazards to environment and to the worker—with impairment of industrial operating efficiencies only where required for environmental maintenance and worker safety.

8. *Expand operations in the Naval Petroleum Reserves of California and Alaska.*

9. *Suspend all lead-in-gasoline restrictions.* This will significantly increase mileage per gallon, without seriously altering any air pollution controls. Restoration of previous lead levels alone will mean less gasoline burned per mile. The EPA now admits it does not have any real case against leaded gasoline on health grounds.

10. *Support the States in effective reclamation of surface-mined lands.* It is essential that coal be a major source of basic fuel for electrical utilities through the rest of this century. It is essential that suitable means be developed to assure that this vital fuel resource be available for electric generation and other energy uses. The federal government should support the efforts of the States and the mining industry in effective reclamation of surface-minded lands, while continuing to permit use of this mining technique.

11. *Common energy goals should be supported by massive private and governmental research and development.* Energy experts recognize that, for the remainder of this century, petroleum and natural gas will be expected to carry much of our nation's energy supply load, with imports making up the difference between domestic supply and demand. Our dependence upon energy supply sources not directly within our national control will be reduced in direct ratio to a) the discovery-development of new energy reserves and b) advanced recovery techniques for known petroleum reserves unproducible by methods now in use.

ENROLLED SENATE RESOLUTION No. 86

A RESOLUTION MEMORIALIZING CONGRESS TO ACT TO MEET THE ENERGY CRISIS; AND DIRECTING DISTRIBUTION

Whereas, Oklahoma holds a unique position in the nationwide energy crisis, being a principal supplier of natural gas and petroleum for the rest of the nation,

in that approximately two-thirds of the oil and natural gas produced in Oklahoma is exported to other states and essentially 100 percent of total energy consumption in Oklahoma is from natural gas and petroleum products and is therefore vitally affected by national energy policies, some of which have served actually to exacerbate the energy crisis, accelerate the depletion of our reserves, and provide economic barriers to exploration and development of our resources; and

Whereas, the history of federal government intervention in the marketplace is not such to inspire confidence in its ability to correct imbalances in supply and demand; and

Whereas, most of this nation's greatest economic problems, such as the current energy shortage, are largely the result not of government inaction but of government interference in the working of what is still basically a free market economy; and

Whereas, this is bad government and bad government is usually the result of too much government; and

Whereas, when Washington substitutes the wisdom of the bureaucracy from the exactitude of the marketplace, Washington itself deserves the blame when the bureaucracy guesses wrong, but the solution is not to create a bigger and better bureaucracy to ration resources and manage prices; and

Whereas, this wrong-guessing is exemplified in:

Speculative and often contradictory statements by Washington officials about fuel supplies causing, among other things, declining automobile sales in an industry employing directly or indirectly one out of six people in this country;

Shortages of propane this winter and gasoline last summer as a direct result of distorting refinery price incentives through an artificial control mechanism;

Current shortages of diesel fuel for farmers, truckers and energy producers resulting from allocation priorities for middle distillates;

Natural gas shortages directly resulting from artificially low prices controlled by the Federal Power Commission which, on the one hand, encourage substitution of this fuel for others such as coal and, on the other hand, provide no economic incentive for exploration and production;

Current shortages of tubular steel goods as a result of lifting price controls on other steel products; and

Whereas, State of Oklahoma officials have attempted to call officials' and the public's attention to the problem of exhaustible petroleum and natural gas resources; and

Whereas, while conservation measures for all users of all forms of energy are necessary and desirable in present circumstances, overreaction and short-term solutions which impose additional rigidities on our economy and resources will do irreparable harm; and

Whereas to date in the current crisis, action taken by the federal government, other than expansion of allocation systems and price controls, has been limited to imposing Daylight Saving Time and legislation which would reduce highway speed limits and prohibit gasoline sales on Sunday.

Now, therefore, be it resolved by the Senate of the 2nd Session of the 34th Oklahoma Legislature:

That the Senate of the State of Oklahoma hereby memorialize the Congress of the United States that constructive action by the federal government is needed to deal with both short- and long-range energy problems, including steps to:

Lift controls on oil and natural gas prices to provide more incentive for exploration and production, including production from presently marginal wells and fields;

Restore the domestic depletion allowance to its previous level of 27.5 percent, and further, eliminate the depletion allowance in its entirety on foreign production of oil and gas;

Eliminate price controls on production of tubular steel goods and other products necessary for the production of more oil and gas (supplies at any price being better than no supplies at all);

Give highest priority to developing non-petroleum fuel sources, including nuclear energy, for generation of electricity, development of vast areas of oil-bearing shale, and extraction of oil and gas from coal;

Call on those states whole legislatures, regulatory agencies and environmentalists have effectively prevented offshore drilling for oil and gas, construction of petro-chemical plants, refineries and offshore terminals, to redirect their

attention toward positive approaches to solution of the energy problem, such as exploration off the east and west coasts, including the Santa Barbara Channel which contains oil reserves of hundreds of millions of barrels.

That copies of this Resolution be forwarded to each Senator and Representative in the Congress from Oklahoma, with the request that this Resolution be officially entered in the Congressional Record as a Memorial to the Congress.

That copies of this Resolution also be sent to the presiding officers of the legislatures or assemblies of every State, territory and protectorate of the United States of America.

Adopted by the Senate the 5th day of February, 1974.

Mr. BELLMON. Mr. President, as I said in the beginning the vote on this bill is one of the most crucial ever cast in the U.S. Senate. The outcome will likely determine the course of our Nation's history. Passage of this bill means a weakened America, dependent upon insecure, costly foreign sources for vitally important energy supplies. A vote to pass this bill is a vote to cut America's jugular and reduce our great Nation to economic and political as well as military impotency. This bill is no favor to consumers. It is rather a deadly threat to our Nation, to every American citizen, I urge its recommital.

Mr. ALLEN. Mr. President, I want to commend the distinguished Senator from Washington (Mr. Jackson) for his dedication in seeking solutions of the oil crisis which we have in this country and throughout the world.

In the field of obtaining a reduction in the confiscatory price of propane, the Senator has distinguished himself through his dedicated efforts. I would like to ask for his construction of certain provisions of the report dealing with propane.

Between the summer of 1973 and January 1974, the average price of crude oil, both domestic and imported, increased about 10 cents per gallon. Because two-thirds of our propane supplies come from domestic lease condensate and natural gas liquids, the average price increase for propane raw materials increased only 7.2 cents per gallon. Yet propane itself has increased at retail by 350 to 400 percent.

If the raw materials price increase were allocated on a dollar-for-dollar basis to the retail price of propane, that price would now average around 24 cents per gallon in contrast to actual prices of over 40 cents per gallon.

The legislation before the Senate would, first, roll the price of propane back about 2 cents per gallon, on the basis of the general roll-back of raw material prices, and second, by requiring a proportional allocation of raw material price increases on a historical basis, the conference report would reduce retail propane prices by another 11 to 15 cents.

If the legislation were in effect now, the retail price would average 22 or 23 cents, instead of over 40 cents.

Does the Senator from Washington feel that this is the intent and moving of the language of the conference report?

Mr. JACKSON. The Senator from Alabama has indeed stated the intention of the conferees and the effect of the legislation exactly. The increases over prices of 1 year ago for propane would, under this legislation, be reduced to an increase in line with the increases in raw material prices, and it is my understanding that the result would be an average retail price of about 23 to 24 cents per gallon.

Mr. FULBRIGHT. Mr. President, I know that many Senators share my concern over the high price of propane. However, these high prices

have a particular significance to me since Arkansas is the largest per capita user of propane in the Nation. As I have stated before, for many Arkansans the price of propane is not stretching their budgets, it is busting them. Many rural Arkansans living on fixed income are, in spite of conservation efforts, facing monthly propane bills of $80, $90, and even $100. A citizen living on social security or on a veterans' pension just cannot afford to pay that much.

Furthermore, the propane price situation is having an adverse impact on agricultural production. For example, a conservative estimate of the effect of these price increases indicates an added cost to Arkansas broiler producers of from $7.5 to $11 million.

As the distinguished floor manager is well aware, propane prices have increased much faster than other refined products. While the average refined product has increased 30 to 50 percent in price, propane prices have increased, in many cases, 300 percent in the last 9 months. Does not this act require that the historical relationship between the prices of petroleum products be considered in the allocation of any price reductions that may occur under the rollback established by the act?

Mr. JACKSON. That is correct. **Section 110** requires that any reduction in the price of crude oil that would result from this act would be passed through to the consumer on a dollar-for-dollar basis. It is specified that this passthrough be allocated on a proportional basis, "taking into consideration historical price relations among such products." The manager's statement specifies that 1972 should be the base period for determining this historical relationship. It is the intent of the conferees that the relationship between the prices of petroleum products, gasoline, diesel oil, propane, and so forth, be on the basis of that which existed in the comparable period of 1972. The purpose of this provision is to restore the relative price relationships of petroleum products to their historic levels.

Mr. FULBRIGHT. Therefore the result should be that propane prices will be rolled back to the point where they are on a par with the prices of other petroleum products with respect to the percentage increase since May 15, 1973?

Mr. JACKSON. That is precisely the intent of the conferees in the matter.

Mr. FULBRIGHT. So we are, with respect to propane, not talking about a 1-cent or 2-cent reduction in price; we are talking about a large reduction, a reduction of over 50 percent from some current propane prices?

Mr. JACKSON. My colleague is correct. Because, as he knows, the price increases for propane have been so wholly disproportionate, a restoration of historical price relationship, together with a rollback in the price of crude oil, will particularly benefit the propane user. We estimate that a per-gallon price reduction for propane of about 20 cents will result from passage of this act.

This is in contrast with actions taken to date by the executive branch. Specifically, on January 30, prompted by congressional action, the FEO for the first time acknowledged the catastrophic propane price situation. At that time, they promised action to reduce propane prices "sharply and promptly."

The only prompt action we can anticipate is that which we in the Congress take today.

Mr. FULBRIGHT. Roughly speaking, what would be the price of propane under **section 110** of this act?

Mr. JACKSON. Our estimate for an average national price for propane after the proposed rollback is 23 cents per gallon.

Mr. FULBRIGHT. As the Senator knows, the Federal Energy Office has published in the Federal Register for February 19, 1974, a new ruling on propane prices. I am happy to see this new ruling, although it is too little, too late. However, I certainly believe that we should take this further action on the Senate floor today to insure, by force of law, a lower propane price.

Mr. JACKSON. I, too, am gratified to see indications of some positive action by the FEO. However, I wholeheartedly agree that in the light of past experience, we cannot rely on administrative action to solve this problem. I share the view of my distinguished colleague that we must act here today by agreeing to the conference report to insure that these prices are lowered.

Mr. FULBRIGHT. It is very important that the price of propane be reduced, and that is the major reason why I intend to support the conference report. I must say, however, that I find several provisions in this report troublesome. I am concerned that the Congress is not fulfilling its obligation as a coequal branch of Government when we grant such broad powers to the President. Congress should develop more specific programs to deal with the shortage.

In addition, I believe that the rollback provision will have an adverse impact on crude oil production from stripper wells. Furthermore, it will hit the small independents, who are vital to a competitive oil industry, particularly hard.

We must not take the short-run view of our energy shortage. In the long run, the problem can only be solved by providing the adequate incentive needed to encourage greater production of all types of fuels. We cannot afford to discourage stripper production at this time; and, therefore, it is my intention, should the Congress adopt this conference report, to introduce legislation to exempt stripper wells from price controls.

We have seen the effect of price controls on natural gas. It is my opinion that these controls have, by discouraging natural gas exploration and production, been a major factor in causing the present energy crisis. Let us not make a similar mistake by implementing unrealistic, rigid controls on other fuels.

Mr. NUNN. Mr. President, in connection with the final Senate consideration of the Emergency Energy Act (S. 2589), I want to commend the Senator from Washington (Mr. Jackson) for his outstanding achievement in originating this bill and guiding it into law.

I am pleased also to associate myself with the remarks of the distinguished chairman of the Senate Select Committee on Small Business (Mr. Bible) in praising the Senator for his personal efforts in assuring recognition in the bill of our country's 8½ million smaller businesses and 40 million homeowners.

For the past several months, I have attempted to gain an understanding of the energy problem facing the Nation and particularly

new and smaller businessmen. We have learned, as the rest of the Nation has discovered, that energy, and particularly oil, is the foundation of our industry and commerce. A few basic statistics illustrate this:

With 6 percent of the world's population, we consume about one-third of the world's energy;

About 70 percent of U.S. energy is utilized for industry and business-related purposes; and

Small businesses furnish more than one-half of the jobs in our economy and nearly 40 percent of the U.S. gross national product.

Events of the past few months, particularly the strike of independent truckers over fuel matters, has shown dramatically that small businesses operate at vital junctures of the economy. In our interdependent society there are many such ways in which we are dependent on small and independent business firms.

Historical experience has shown that whenever there are shortages of fuels or materials, the impact of Government regulation falls hardest on smaller business firms. Some reasons for this are the great number of such businesses, the lack of high-powered advocates associated with their smaller size, and their almost infinite diversity. Because of these factors, it is many times more difficult for small business interests to be identified and properly represented before Government agencies in any crisis situation.

In order to cope with problems in the energy area, I began an intensive inquiry last autumn. As part of this investigation, I met with the representatives of 18 small business organizations on November 1. Later 3 days of public hearings were held on November 27–29, 1973. As a result of these studies, I proposed an amendment No. 659 to S. 2589—Emergency Energy Act—asking that the varied interests of small business be given recognition and that these firms be given fair treatment in the drafting and implementation of the regulations which would form the heart of the country's energy program for actual and impending fuel shortages. This amendment was modeled after section 214 of the Economic Stabilization Act and expressed the policy of Congress that small business be given a voice in the making of the rules that would affect their financial destiny.

All of us in this body are aware of the pressures resulting from the Arab oil embargo of mid-December 1973. Profound economic and social issue crowded each other for the attention of Senate and House Members attempting to develop comprehensive legislation to deal with our national energy difficulties.

Nevertheless, through the splendid cooperation of the chairman of the Interior Committee (Mr. Jackson), amendment No. 659 was approved by the Senate and became section 308(b) of the comprehensive emergency energy bill in December. Appreciated also was the support given this measure by its cosponsors: Senator Bible and Senator Javits, chairman and ranking minority members of the Select Committee on Small Business; Senators Nelson, McIntyre and Taft.

However, it was very disappointing that the House-Senate conference initially did not approve the Nunn amendment. The problems facing the conferees in their deliberations were, of course, tremendous. In fact, Senator Jackson's own amendment authorizing loan assistance

to homeowners and small businesses wishing to make energy-conserving alterations to their insulation, storm windows and heating equipment—sec. 308(a)—at one time fell by the wayside.

This conference action was of great concern to me. I strongly urged the conference to reconsider the inclusion of both of these provisions of section 308 **[Sec. 130]** in the final bill.

In letters to the Senate and House conference chairmen, I pointed out that the importance of both small business and homeowners to our country. It is well known that almost two-thirds of our people own their own homes. If the long-term objectives of energy conservation legislation are to be successful, there must be some positive incentives as well as penalties to "think conservation" for the great majority of our population.

It was my feeling that even a relatively small loan—at the cost of money to the Federal Government so there would be no loss to the Treasury—could exert widespread influence on our population to make the changes necessary and thereby save scarce fuel and energy.

I can report to this body that it was only because of a determined battle by the Senator from Washington that section 308 was restored to the conference report. **[Sec. 130.]**

This action demonstrates, I believe, that Congress is concerned with small businessmen and small homeowners who are struggling to remain solvent in an uphill battle against inflation.

I hope the loans thus authorized will keep some small business firms in business and allow others to grow and give better services to consumers. I hope these loans help homeowners save money and give some timely assistance to the faltering home building and restoration industries. Beyond this, I sincerely hope that this declaration of policy will have direct and immediate consequences upon administrative regulations on fuels.

Several small business organizations, including the National Federation of Independent Business, have pointed out to my subcommittee that the regulations of January 11 on motor gasoline, middle distillates, and residual fuel oil do not treat smaller business equitably.

Many thousands of small entrepreneurs depend on their vehicles for their livelihoods. Yet, under the January 11 regulations it appears that they are forced to line up at the gas pumps with Sunday pleasure drivers with no assurance that they will receive fuel for their vehicles.

The regulations make no provision for service station owners to reserve fuels—even for their long-term customers whose customers, employees and owners may experience severe discomfort or deprivation because of the lack of fuel.

Essentially, these regulations provide that large bulk purchasers of fuels—that is, 84,000 gallons a year or 233 gallons per day—receive 100 percent of 1972 supplies before smaller businesses can receive 90 percent. This to me is unfair and should be remedied without delay. This was part of my presentation to the conference committee, and I hope that it will be taken into account as legislative history in the course of implementation of allocation, conservation and, if necessary, rationing programs.

It is my feeling that section 308 **[Sec. 130]** of this legislation has pointed the way and that the regulations should follow suit. My sub-

committee will be watching this situation closely to see whether the Federal Energy Office is responsive to the will of Congress in this regard.

I would like to say a further word about the pioneering work of Senator Jackson in the energy area. As chairman of the Senate Interior Committee, in February of 1971 Senator Jackson joined with the chairman of the Public Works Committee (Mr. Randolph) as principal proponents of Senate Resolution 45 to authorize a national fuels and energy policy study by three committees of the Senate. This resolution was cosponsored by 50 Senators and also approved on May 3, 1971.

Thereafter, study under the personal leadership of the Senator from Washington has produced 29 sets of hearings and 40 committee reports or prints on various aspects of our energy problems. This is undoubtedly the most comprehensive compilation of information and comment on U.S. energy problems ever assembled. (See publications list of the National Fuels and Energy Policy Study, December 1973.)

Along the way, in June 1972, the Senator from Washington set forth in the letter to the President his conclusion that there should be an "indepth study and assessment of national security, foreign policy, and domestic energy policy implications of our growing dependence on imported crude oil and petroleum products from the Middle East and elsewhere."

Thus, Senator Jackson was, in 1971 and 1972, calling for help from the branch of the U.S. Government having the responsibilities in the energy field and the manpower and budget which would have enabled them to carry out these responsibilities.

If, in response to these Senate requests, such a comprehensive study had been launched by the executive branch in mid-1971 or mid-1972 or in mid-1973, the Nation and the small business community would be in a much better position to deal with energy shortages in 1974.

Accordingly, I wish to express again my sincere appreciation for the outstanding leadership and legislative craftsmanship of the Senator from Washington as to energy in general, and as to the Emergency Energy Act—S. 2589—and its small business and homeowner sections in particular. **[Sec. 130.]**

Mr. Abourezk. Mr. President, on February 6, 1974, a House and Senate conference committee referred their second report on the Emergency Energy Act to both the House and Senate. Today the Senate must consider whether or not to accept the provisions contained in the conference report.

Section 110 entitled "Prohibition on Inequitable Prices" is being touted as a crude oil price rollback provision. Yet, if one carefully examines the wording of the section and the recent history of the administration's price increases, one quickly notices that this section not only does not roll back the price of crude oil, but makes legitimate the totally unjustified and excessive price increases of the last 9 months. Thus, if the Senate votes its approval of the conference report, it will go on record approving the major oil companies' price gouging of the American people.

To clearly understand what, in fact, section 110 of the conference report will do, the following facts must be noted. The section sets a

ceiling price on all domestic crude oil of $5.25 a barrel. In addition, according to **paragraph (5)(A):**

> The president may . . . amend the regulation . . . to specify a different price for domestic crude oil, residual fuel oil, or refined petroleum products, or a different manner for determining the price . . . if he finds that such different manner for determining such price is necessary . . .

Paragraph (5)(C) states that—

> No price for domestic crude oil or any classification thereof . . . shall exceed the ceiling price by more than 35 percent.

Therefore, **paragraph (5)(C)** would give the President discretion to raise the ceiling on all domestically produced crude oil to $7.09 per barrel.

What does all this mean? First of all we must realize that the United States produced 3.2 billion barrels of crude oil in 1973. Of this amount currently one-third is considered so-called new oil and two-thirds comes under the heading of "old oil." Currently, "old oil" prices are frozen at $5.25 a barrel. "New oil" is uncontrolled and is fetching prices between $10 and $11 a barrel. Therefore, if we use the figure of 1 billion barrels of "new oil" selling at an average of $10.50 a barrel we arrive at a cost of $10.5 billion. Then, if we take "old oil" oil of roughly 2 billion barrels at $5.25 a barrel, we get a cost of $10.5 billion for a total of $21 billion for 1 year's production of domestic oil at current price levels.

Now, how would the Energy Emergency Act conference report roll back these prices? The report would eliminate the two-tiered pricing system and set a ceiling price for all domestic oil at $5.25 a barrel. Furthermore, it would allow the President at his discretion to raise the price to $7.09 a barrel. Assuming that President Nixon will continue to look upon the oil industry in the same way a doting father looks upon his one and only son, the public can expect that President Nixon will quickly take advantage of the 35-percent increase provision and allow the oil companies their $7.09 per barrel price. At the production level of 3 billion barrels this $7.09 per barrel price will amount to a cost of $21 billion—the same amount we are currently paying.

In short, the Senate would make legitimate a $10 billion transfer of earnings from the pockets of consumers into the bank accounts of the major oil companies. This is the $10 billion that the Nixon administration has allowed the major oil companies since it began increasing prices on May 15. On May 15, 1973, the average price of a barrel of domestically produced crude oil stood at roughly $3.62. Multiplied times production of 3 billion barrels the price tag equaled roughly $11 billion.

According to the Federal Trade Commission July 1973, investigation of the petroleum industry the top 20 major oil companies in 1970 controlled over 93 percent of domestic proven oil reserves. Also in 1970, 20 companies—16 of which are the same—controlled over 87 percent of domestic crude oil and gasoline refining capacity. Many of these same companies, according to the November 1973, report of the Senate Permanent Investigations Subcommittee, were the ones primarily responsible for restricting output in 1972 and 1973 and directly causing both fuel oil and gasoline shortages. That the current

fuel shortages have been caused by a shortage of crude oil in the world and the Arab embargo. The oil companies and the Nixon administration would have this Congress and the public believe not so. The fuel shortages have been caused by the deliberate and joint actions of the major oil companies and the Nixon administration. By voting in favor of the conference report the Senate would capitulate to the power of the oil oligopoly and force the American people to give in to the biggest holdup in history.

The conference report assumes that the fuel shortages and so-called "energy crisis" is real. As far as I am concerned and as far as many of my constituents are concerned the fuel shortages have been skillfully contrived and the so-called energy crisis is nothing but a hoax. It is a hoax designed to fleece the American people—to increase oil company profits; to achieve their legislative objectives; to eliminate competition at every level; to raise prices; to forestall environmental safeguards; and to grant to the executive branch of Government unlimited dictatorial power.

The conference committee report stated clearly that the executive branch will be given "a full spectrum of extraordinary powers to cope with the—emergency—situation—as defined by President Nixon on November 8, 1973, when he 'addressed the Nation on the dimensions of the energy crisis.'" The conferees expect that once these "extraordinary powers" have been granted to the President, that he "will use them forthwith, and take strong action to reduce demand for energy during this period of national energy shortages * * *"—43–45. The Congress was also told that the President would fully cooperate with the Special Watergate Prosecutor. As far as I am concerned investing President Nixon with "extraordinary powers" at a time when only 28 percent of the American people have any confidence in his administration would not only be unwise, but disastrous for the economic and political health of the country.

The report urges the granting of "extraordinary powers" to the executive branch on the basis of the as yet unproven premise that the shortages, the crisis, faced by the people of this country are real, rather than the result of carefully designed and coordinated actions taken by the Nation's major petroleum companies with the approval and assistance of the Nixon administration.

The Senate will, by voting its approval of the conference report on the Energy Emergency Act, grant legitimacy to the as yet unproven assumption that the fuel shortages are real. At the present time this action is both precipitous and uncalled for. The President already has broad powers to allocate and set the price for petroleum and petroleum products. And as for the other provisions of the Energy Emergency Act, such as unemployment assistance, these should be passed on their own.

I would like, with the Senate's indulgence, to briefly suggest why I believe the current shortages and the so-called energy crisis are part of a hoax, a scheme to blackmail the American people by making them believe there is a shortage when there is none. I spent the past week in South Dakota. Some gas stations there were open 24 hours a day. There were no lines. The average price of a gallon of regular gasoline was approximately 46 cents. Yet, in the major cities, in Wash-

ington, in New York, in Chicago, in Boston, in Los Angeles, in Miami, in Philadelphia—people are forced to wait in long lines. It is in these cities, the major U.S. markets where there is a large amount of press and media coverage, that people are being conditioned to shortages. In addition, the President has called for reduced speed limits, lowering of temperatures, and a switch to daylight saving time. All of these things are nothing but psychological methods to convince a confused and disbelieving population of the so-called reality of the shortages.

The major oil companies have been spending millions of dollars in advertising to psychologically persuade us that the shortages are real. I am convinced that the heads of the major oil companies and key administration officials arrived at similar conclusions regarding the effect fuel shortages would have on the country. These men reasoned that most Americans, given the fact that they are used to a certain lifestyle extremely dependent on energy consumption, would be more willing to pay higher prices if they were forced to suffer the consequences of shortages, lines, rationing, and so forth. In short, the way to get higher prices was to first condition people to the so-called reality of the shortages. Once the people were forced into a choice of the lesser of two evils, these oil company executives and their administration friends reasoned that people would be forced to accept higher prices for their fuels, rather than put up with continued shortages of gasoline, heating oil, propane, and so forth.

A recent example of how a major oil company helped contrive a heating oil shortage in New York City may underline the reasons I believe the Senate must not give its approval to the conference report.

On January 13, 1974, the Washington Post reported that a subsidiary of the Shell Oil Co. had been selling heating oil in Metropolitan New York "at prices 3 times what it had paid to import it." The Shell subsidiary paid an estimated 16.5 cents a gallon for the oil which it bought last summer and sold the oil beginning in November at prices ranging from 47.5 cents a gallon to 55 cents a gallon.

On February 4, 1974, the New York Times reported that a Shell spokesman explained that the reason why there was a gasoline shortage in the Northeast was due to "the fact that we have stored a large amount of fuel oil in the Northeast, so that people will not suffer from the cold, and the fact that the demand for gas has risen too fast."

On February 7, 1974, the New York Times reported that the New York attorney general filed a complaint against the Shell Oil Co. for "diverting and holding secretly in storage home heating oil meant for New York homeowners. At the same time according to the complaint, Shell "was telling its New York customers that it could not meet their requirements, because it did not have enough oil." The complaint further charged that under an arrangement involving four Shell subsidiaries, 1 million barrels of No. 2 heating oil were kept under customs bond in New Jersey, not "officially" imported, and were not sold until last November—"after the imposition of the Arab oil embargo at exorbitant prices."

Attorney General Louis Lefkowitz called the complaint "the first in the United States where we have uncovered what we charge to be a contrived fuel shortage." Shell Oil Co. does not deny the charge; it merely says nothing illegal was done.

Another interesting feature of this action is the fact that the fuel oil was never reported to the American Petroleum Institute. It is the API upon which William Simon's Federal Energy Office depends for much of its statistical data. It is this data used by both the FEO and the major oil companies which has tended to support the oil industry's and the administration's contentions that there are major shortages of all kinds of fuel.

While there is no shortage of oil company advertising and administration rhetoric defending excess profits and high prices, there is an enormous shortage of truth. For example, in January, the Bureau of Mines revealed that the oil industry had near-record stockpiles of all petroleum products. From January to October 1973—the last complete recording period—supplies of oil products totaled 4.8 million barrels while demand reached 4.7 billion barrels. Moreover, the American Petroleum Institute showed that oil imports from October to December increased by 30 percent over last year. In fact, according to the API's figures home heating oil stocks were 203.5 million barrels at the yearend—up 28 percent over 1972, Gasoline stocks were also holding at over 200 million barrels.

While the above figures are surely conservative, they are also unaudited. The Federal Energy Office has the power of subpena which it could use to demand information on oil company reserves, production, and inventories. But the FEO has refused to use this power, and so the Government and the public are without reliable information. Energy information has been and continues to be a well-kept secret of the oil companies. Executives of supposedly competing companies are well-acquainted with information about each other's operations due to their numerous joint ventures and mutual interests. The Senate today is being asked to grant price increases to the major oil companies and extraordinary power to the President without the benefit of reliable and accurate information on energy reserves, costs, production, supplies, et cetera. To make these decisions without reliable data would demonstrate to the American people how easily the Senate is influenced by the economic and political power of the major oil companies and the Nixon administration.

In discussing this bill on the floor Monday, I commented that many people of my State are now at the point where they have to choose between spending money on food or on fuel. They cannot afford both. Food costs rose by more than 20 percent in 1973. Unless there is a real rollback in petroleum products, the American family, I am convinced, will face in 1974 another increase in their weekly food bill of at least that amount, and possibly even more.

A bushel of wheat is not grown in a week. A steer is not brought to the market in a month. The basic food products that we are now consuming on the market were produced, processed, and transported when energy costs for all food production and marketing processes were something like half of what they are now.

The increase in prices for petroleum products that the administration has already allowed has yet to be reflected in the cost of groceries at the supermarkets.

Those new increases, that we have allowed to occur since December 1 of last year, will not be a part of the food bill until next fall or until 1975.

And I predict further that there are going to be some awfully angry families when this spiral deals its new blows this year and next.

One does not have to have a doctorate in economics to make these predictions.

The USDA has estimated that the value of all farm products sold to U.S. consumers in 1973 at $51 billion and the costs to transport, process, and sell these products is estimated at $83 billion.

The USDA also reported, in its Economic Research Service report, Farm Income Situation, July 1973, that fertilizer costs $2.5 billion; fuel and oil costs $1.78 billion; and electricity $182 million—for a total cost of fuel and fuel-related products of $4.489 million.

Any farmer can tell you that these costs, with the exception of electricity, have doubled and in some cases trebled since this report was published.

Thus, there is at the very least an additional $5 billion in increased costs that will be a part of the food we produce in 1974 and the cattle that came to market in 1975.

But there is more to it than that. Let us take cattle, as an example. The Agriculture Department reports that, as of July 1973 the cost of feed for producing livestock was $8.9 billion.

The effect of higher feed costs, from crops produced in 1974, will thus not be felt in the meat prices until 1975—but those increases are certain to occur without a real rollback.

Similarly, the added costs of processing, transporting, and marketing food because of the increases in all petroleum products are yet to be felt on the market.

What will all of this mean? It means a continued spiral, at least 20 percent in the cost of food in 1974 and more in 1975.

Section 110 of the Energy Emergency Act conference report is called a price rollback provision. However, the extremely likely result of the language contained in **section 110** will be either a freeze of prices at the existing high levels or a slight increase.

Section 110 of the conference report presently calls for all crude oil prices, old and new, to have a top limit of $5.25 per barrel with a 35-percent increase to $7.09 per barrel at the option of the President.

Under present prices old crude oil under price controls is limited to an average of $5.25 per barrel, and new crude oil and small stripper wells are uncontrolled and presently average $10.25 per barrel. Presently one-third of our domestic production is selling at an average of $10.35 per barrel and two-thirds is domestically produced "old" crude oil at an average of $5.25 per barrel.

Using our present daily domestic production, the fact that this is not a price rollback can be demonstrated as follows:

Under present prices:
New and stripper well oil—domestic:
3.5 million bbls/day×$10.35, $36.2 million.
7.7 million bbls/day×$5.25, $40.4 million.
Total Daily Cost to Consumer, $76.6 million.
Under so-called "rollback" section 110 of conference report:
All crude oil—domestic:
11.2 million bbls/day×$5.25, $58.8 million.
11.2 million bbls/day×$7.09, $78.1 million.

If the President decides to leave crude oil prices at $5.25 per barrel, there would be a saving of $17.8 million per day; however, given the

present momentum of administration-allowed price increases, the top price of $7.09 per barrel will most likely be in effect before the end of a 3-month period. If we are to effect a real rollback, section 110 should be deleted from the conference report and a separate provision acted upon immediately to give American consumers fuel price relief as soon as possible.

Mr. McGee. Mr. President, it is with great reluctance that I announce today my intention to vote in favor of the motion to recommit S. 2589, the Emergency Energy Act.

On January 29, I also with the same reservation voted to recommit this bill for the reason that the conferees had included in the bill a windfall profits tax section, which, most experts agreed, was disastrous and virtually unadministrable.

Today my negative vote is based solely upon my opposition to the so-called crude oil price rollback provision.

Were it not for the rollback provision **[Sec. 110]**, S. 2589 would have my complete support with little reservation. Many of the provisions contained in this bill are vitally necessary if we are going to overcome the problems of the energy crisis. I support, without any reservation whatsoever, the effort to broaden the unemployment compensation coverage for persons put out of work, because of the shortage of energy, the low-interest loans to homeowners and small businesses for the installation of energy saving devices, the improved Clean Air Protection Standards, the energy conservation plans, grants to States, and the many other constructive provisions in this legislation.

I consider, however, the crude oil price rollback provision to be counterproductive. I am convinced that it will serve as a deterrent to increased exploration and discovery of new crude oil and other new sources of energy.

Energy is important to us as a nation. With only 6 percent of the world's population, we are consuming one-third of its total energy. About one-third of the oil which we are now consuming comes from imports. The price of the foreign crude oil has increased dramatically and now averages about $10 a barrel. The remaining two-thirds of our oil consumption comes from domestic production. Currently 75 percent of our domestic production is controlled at $5.25 per barrel. The remaining 25 percent is uncontrolled, as a result of both congressional action and Executive order. The average price of uncontrolled, domestic crude oil, which includes new and stripper production, is $9.51 per barrel. This new crude and stripper well crude accounts for only 15 percent of our total supply, including both domestic and foreign oil.

The rollback provision **[Sec. 110]** in S. 2589 applies only to this new domestic crude and the stripper or marginal well crude. It is estimated that such a rollback only could result in temporary savings to consumers of about 1 cent per gallon on all oil products. On the other hand, it would result in diminished incentives for domestic exploration and production, both from new reserves and from stripper wells which have heretofore been economically unfeasible to produce.

The increased prices allowed by the Government for "new oil" have brought forth an increase in the activities related to domestic petroleum exploration. Since January of 1973, this activity has increased

by 12 percent. There is also some evidence that as a result of this exploration the domestic supplies available are being increased, although there is naturally a time lag between exploration and actual production.

Of particular concern to me is that the proposed price rollback will hurt the independent producer to a far greater degree than it will affect the major oil companies. This is true because the independents drill 80 percent of exploratory wells in this country, and it is estimated that they operate about 80 percent of the stripper wells. This is a fact in my State of Wyoming, which, as you know, is a major oil-producing State. A rollback would, I am certain, not only result in reduced production in Wyoming but would also have a negative impact on employment in our No. 1 industry. Furthermore, unless we encourage new production domestically, we will find an increasing dependency on higher priced foreign oil followed by higher prices for oil products to the consumers.

Mr. President, it is for these reasons that I am opposed to the rollback provisions contained in this bill and also why I am compelled to vote for the motion to recommit S. 2589 to the conference committee. I remain hopeful that the conferees will agree to eliminate the rollback provision and report the bill back to the Senate so that we will have an opportunity to vote upon final passage of the bill and the important emergency energy measures which it contains.

Mr. President, I want to make it clear that I stand vigorously opposed to exhorbitant energy prices to the consumer, such as those we have experienced in the past year with regard to propane. I also stand opposed to excessive windfall profits for those companies in the energy business. It is my understanding that the Senate Finance Committee is considering legislation which will prevent such windfall profits, but will, at the same time, contain built-in incentives for increased investments for exploration and production of new energy reserves. In my opinion, this is the approach which we should be taking rather than the one we are considering here today.

Mr. HANSEN. Mr. President, I note that this measure like so many others that affect mining is subject to provisions of the Administrative Procedure Act. **[Sec. 118.]** Recently we had the surface mining bill with provision for determinations to be made by following the provisions of the Administrative Procedure Act. Other mining laws now administered by the Department of the Interior have similar requirements. Too many owners or operators who are affected by this provision are not just sure what it means. They wonder if in having their rights determined in this manner they are being denied their day in court.

I see my friend the distinguished Senator from Nebraska, the ranking member on the Senate Judiciary Committee and former chairman of the Subcommittee on Administrative Practice and Procedure, here and I direct my question to him. What do these provisions regarding determinations under the Administrative Procedure Act mean for an owner or operator who may find himself in disagreement with the officials of the agency in charge of carrying out an act or determining his rights?

Mr. HRUSKA. I thank my colleague. Basically, the reference to the Administrative Procedure Act in a bill was put in there as a pro-

tection to the propery owners or operators against the possibility of overzealous administration action. Any conflict arising out of the administration of an act would have to be handled through proceedings of administrative tribunals under the Department of the Interior if that is the agency charged with enforcement. Before any citizen could be deprived of any substantial right, he would be given due notice of the charge brought by the enforcing agency and given a hearing in an administrative court.

Mr. HANSEN. Administrative trial is meaningless to an owner or operator. He thinks he is being denied his day in court. The judge is an employee of the agency. If he is bold enough to make a decision favorable to an owner or operator, he can be, and usually is, reversed by higher administrative authority. The lawyer who handles the case for the complaining agency is often an assistant to the lawyer for the appellate administrative agency to whom the Secretary delegates the final decision. The administrative court system has aroused a great deal of resentment among persons affected by displaying more interest in carrying out administrative policy dictated by department heads than they show for the rights of citizens.

What protection does a citizen have if the administrative court hands him an unfair decision? How does he really get his day in court, as we know it, if he ever does?

Mr. HRUSKA. If an owner or operator is dissatisfied with the way the administrative tribunals have handled the case brought against him, and if he is not economically exhausted by the fight on the administrative levels, he can obtain judicial review of the final administrative decision in the Federal courts. The U.S. District Courts are given jurisdiction to review and to set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, contrary to constitutional right, or not supported by substantial evidence, or unwarranted by the facts. That is the substance of title 5, United States Code, section 706, in the Administrative Procedure Act.

Mr. HANSEN. I realize that Congress intended to protect the rights of citizens by the Administrative Procedure Act, but as a practical matter do the courts make a meaningful judicial review of administrative actions and decisions? What about the complaints we get that the Federal judges are unduly influenced by the decisions of the administrative courts and hesitates to reverse bureaucratic action? Particularly, the courts' track record in mining cases to date has shaken the citizen's faith in the courts. They feel that the judges never fully review the record, never attempt to determine if there is proof to substantiate the administrative findings and decisions, rather that they take the easy way out by saying that there was evidence, without giving it weight, to uphold the agency findings. Judicial review is a farce if the courts are going to put a rubber stamp of approval on whatever decision Interior has made. We hear as I have said all too often that the Federal judges are so impressed by Interior's claim of having expertise in matters connected with the public lands and with mining that the judges adopt the administrative conclusions and affirm the administrative decisions without really reviewing the record in the case, so long as Interior's attorneys can point to some evidence to support the decision brought in for review.

Mr. HRUSKA. The courts remain the only protection for a citizen's constitutional rights which our governmental framework offers. It may help somewhat if we go on record here as to what Congress intended to accomplish by writing into the Administrative Procedure Act the provision [Sec. 118] for judicial review of administrative action. The courts should not be rubberstamps; it is their duty to protect the citizens against bureaucratic injustice. Congress intended that the courts should review administrative decisions critically. If the decision below was wrong, if it was contrary to the evidence in the record, the court should reverse. Reverence for Interior's expertise and policy should not cause the court to wield any rubberstamp of approval for such a decision. And the same principle applies to review of administrative decisions from other departments.

The way the Administrative Procedure Act is meant to be carried out, the administrative law judges are expected to make specific findings as to the evidentiary facts in each case they hear and to frame their ultimate conclusions accordingly. If the case is brought up for judicial review, the reviewing court is not intended to dispose of the case merely by looking for some evidence in the record to support the decision below. The reviewing court should consider whether or not each of the rulings on evidentiary fact is supported by substantial evidence. The courts should not adopt uncritically findings of ultimate fact made below simply because they are labeled "findings," when they are really conclusions.

The reason why it is essential for the judge who hears the evidence to make specific findings of evidentiary fact was pointed out in Saginaw Broadcasting Co. against the Federal Communications Commission. Judge Stephens came right out with the statement that—

> The requirement of findings is far from a technicality. On the contrary, it is to insure against Star Chamber methods, to make certain that justice shall be administered to facts and law. This is fully as important in respect of commissions as it is in respect of courts.

When the trial judge bases his conclusions upon specific evidentiary findings, these furnish to a reviewing court the foundation upon which to base an intelligent review of the decision. And the reviewing court should not shrink from the sometimes laborious task of examining the record to evaluate the findings made below. The Administrative Procedure Act, section 706 of title 5 of the United States Code, makes it the duty of the reviewing court to review the whole record, or such portions thereof as may be cited by any party, and to take due account of the rule of prejudicial error.

If the reviewing court will take the trouble to make the critical examination of the administrative record which Congress intended when writing the Administrative Procedure Act, the court should be able to detect instances where bureaucratic policy has been allowed to override the facts which support the citizen's rights. Citizens must look to the courts to protect their constitutional rights and give them meaning. Unless the courts will stand out against instances of bureaucratic injustice, the Constitution becomes only a scrap of paper.

Mr. HANSEN. I thank my colleague. This will be most reassuring to those who have expressed concern over administrative tribunals and the courts.

Mr. HRUSKA. Our form of government must necessarily make use of administrative agencies, and the course of history has shown many times and in many countries that the inevitable tendency of agencies is to reach out for increasing power, to expand the scope of their authority and the number of their personnel until what President Franklin Roosevelt called the fourth branch of government becomes truly a bureaucracy. And, more recently the Senator from Arizona, Senator Goldwater, expressed similar concern about the bureaucracies. Power alters the perspective of the persons who wield it, and particularly where agencies administer large areas of public resources, there is a tendency to create and enlarge a Federal empire which is inside the 50 States, but really independent of them.

The temptation to consolidate that empire by dispossessing citizens of property rights lawfully acquired under acts of Congress is a strong one. To a zealous bureaucrat the project may look like a righteous crusade, while the citizen screams "Confiscation." The task of preserving our kind of country, one where a citizen's constitutional rights are a reality, so that it will not turn into a bureaucracy where those rights have no meaning, calls for the courts to check and correct administrative abuse of power.

Mr. HANSEN. I thank my distinguished colleague for making this record. It will help greatly to alleviate the fears that have been expressed to me by owners and operators.

Mr. NELSON. Mr. President, when the Senate voted 3 weeks ago today to send the conference report on S. 2589, the Energy Emergency Act, back to conference it recognized that the report contained many good provisions that should be retained while several other sections merited further consideration. The conferees have made several modifications while retaining the best sections of the original language. The unconstitutional and surely workable so-called windfall profits tax, which in fact was not a tax at all, has been replaced with a consumer aiding price rollback provision affecting all petroleum products and propane. The unemployment compensation and employment impact section has been considerably and properly expanded. And finally, the language dealing with the conversion of facilities from natural gas and fuel oil to coal has been clarified and tightened.

By retaining the best provisions of the original language and amending and refining these three sections, the conferees have come back with a substantially improved piece of legislation. Consequently, I will vote for the conference report.

Each of these three revisions deserves additional attention. First, the windfall profits section insured individual Americans only years of fruitless litigation, while the price rollback will save American consumers $20 million a day or $7,300 million a year by reducing fuel prices. This provision would make all crude oil produced in the United States subject to price controls, and put it all under an initial ceiling of $5.25 a barrel. The President could then allow the price of some kinds of crude to rise as high as $7.09 a barrel, but no higher. This rollback which is a far better consumer protection concept will reduce the average price of gasoline about 4 cents a gallon. In addition, an Interior Committee energy expert estimates that the price rollback will cut the consumer's propane fuel bill in half.

Recent price increases for propane, gasoline, home heating oil, and diesel fuel have added unconscionable profits to the oil industry while delivering a crippling blow to the average American. The Federal Energy Office estimates that every dollar cost increase for a barrel of crude translates into a 2.5-cent increase in a gallon of gasoline or heating oil. From January to October 1973, percent changes in the wholesale price index included increases of 79.6 percent for fuel oil, 53.8 percent for gasoline, 22.7 percent for crude products, and 55.8 percent for all refined petroleum products. By December, fuel price increases accounted for 40 percent of the increase in the Wholesale Price Index.

The rollback provision [Sec. 110] does not go as far as I would like but it is the most we could get and not force a Presidential veto. The price rollback provision provides essential interim protection against unprecedented price gouging of the public until longer term pricing policies can be developed.

Second, the conferees have examined the questions I raised in a colloquy with the distinguished and able chairman of the Public Works Subcommittee on Air and Water Pollution (Mr. Muskie) concerning the length of time available to a converted facility to achieve compliance with ambient air quality standards. [Title II.]

We are in a shortage situation and we will continue to remain in one for the foreseeable future. We must be concerned with drafting a system that will allow variances from air pollution standard when it is conclusively demonstrated that the low sulfur fuels and/or natural gas does not exist in sufficient supplies. We must insure that there is a national allocation program for our limited low-sulfur supplies in order to minimize to the greatest practicable extent the adverse environmental and health effects associated from high sulfur emissions. And at the very least we must insure that the plants that are permitted or that will be ordered to convert to coal will install as quickly as possible continuous emission control systems and revise their compliance timetable in order to fully meet the standards established by the Clean Air Act.

The sections of the conference report dealing with industrial plant conversion from fuel oil and natural gas to coal and the necessity to suspend air pollution standards have been tightened. The new language clearly recognizes that coal converters who choose to comply with the provisions of the Clean Air Act by using low sulfur coal must comply with emission limitations as soon as an adequate supply of coal with the proper sulfur content is secured. The Administrator is required to mandate the use of complying coal as soon as sufficient supplies become available.

The revised language mandates plants that have converted to coal be required to use continuous emission reduction systems to achieve required air pollution levels as soon as possible. The conference report now contains language establishing January 1, 1979, as the latest possible date to achieve compliance. The Administrator of the Environmental Protection Agency—EPA—would be able to move that date up, and the use of this provision now places the burden of proof on the industry to demonstrate that low sulfur coal is not available before a suspension may be granted. [Sec. 119 CAA.]

The second significant improvement concerns those plants that voluntarily wish to convert to coal in order to conserve petroleum. A

suspension from compliance will only be granted after the plants conclusively demonstrate intent to convert for at least 3 years. A single alternative bid for coal is not sufficient criteria to warrant a suspension from compliance. Other steps will be necessary, such as applying through proper channels for an air pollution variance, obtaining a firm contract for supplies of low sulfur coal, or of making a substantial investment in conversion equipment in order to receive any delay.

The Administrator of the EPA would be prohibited from approving an extension if these efforts could not be demonstrated to his satisfaction. I believe Mr. Russell Train, Administrator of the EPA, recognizes the complexities of the situation we are attempting to rectify and will sternly but fairly make those determinations.

The Administrator of the Federal Energy Office along with the Administrator of the EPA would make a plant-by-plant analysis of the environmental and health implications before allowing conversion and preventing a suspension. The EPA would be expected to deny such extensions where there is a potential for endangerment to the public's health. **[Sec. 119(d) CAA.]**

I believe this compromise will allow the granting of the short-term variances to meet the needs of the energy crisis while moving us, a little more slowly than perhaps I would like but moving nevertheless toward the goals established in the Clean Air Act.

Finally, the conferees have taken a positive first step in providing and expanding coverage for the tens of thousands of people who have either been laid off or have lost their jobs, because of the energy crisis. **[Sec. 116.]**

Unemployment related to shortages of energy and other natural resources must also be one of our major concerns in the months ahead. The national unemployment rate for the months of January rose four/tenths of 1 percent to 5.2 percent, for the largest single month gain in 4 years. Some 600,000 workers have lost their jobs in this country since October, and no one believes the end is yet in sight.

Section 116 of the conference report now represents a valid attempt to solve part of this massive unemployment problem. It has been much improved since the Senate voted to recommit the bill to conference, and it now allows a wider flexibility on the part of Federal and State officials to define energy-related unemployment.

There is no expectation on our part, of course, that this provision will solve all the unemployment problems that will arise in the next few months—or even that it will solve all the problems that can be solved by unemployment compensation alone. As a member of the Finance Committee and chairman of the Subcommittee on Employment, Poverty, and Migratory Labor of the Labor and Public Welfare Committee, I will be taking a long, hard look at additional proposals to strengthen our arsenal of weapons in the war against unemployment. In that regard, and as a necessary complement to **section 116** of this bill, I eagerly anticipate rapid consideration of the proposals being made to strengthen our entire unemployment compensation program—including the administration's proposal to augment all existing benefits in areas of high unemployment by $1 billion between now and June 1975, and to bring under the unemployment compensation program for the first time some of the many millions of unemployed workers who have thus far been ineligible for such benefits. In

addition, I expect quick action on meaningful appropriations for public service employment under the recently enacted Comprehensive Employment and Training Act; on adequate funding for job training and retraining programs for those who need them; and on careful consideration of new proposals for solutions to both short- and long-term unemployment problems related to present and future shortages of natural resources. I might note here that my Employment Subcommittee is holding hearings on these and related topics in the very near future.

Mr. MONDALE. Mr. President. I rise in support of the conference report to S. 2589, the National Energy Emergency Act of 1973.

Recently, when the Senate first considered this conference report, I supported the motion of the distinguished Senator from Wisconsin (Mr. Nelson) to recommit the bill to conference.

During the debate on the conference report I stated:

> The gut issue which affects every American working family is the incredible increases in the price of crude oil and petroleum products to which we have been subjected in recent months . . . Americans are being slowly bled to death by rising prices, and rising oil prices are the most dramatic and most important source of this cruel inflation. The real issue is price. I therefore believe that we should focus attention as quickly as we possibly can to legislation which attacks the real problem of price.

I believed then and I believe now that there is no question as to the need for an immediate freeze and rollback in domestic crude oil and refined petroleum product prices. Since the beginning of 1973, the price of "old"—price controlled—crude petroleum has risen from about $3.50 per barrel to $5.25 per barrel. Included in this increase was an increase of $1 per barrel, allowed by the Cost of Living Council on December 19, 1973, which resulted in an increase of revenue to the oil companies of $3 billion per year without any promise of increased domestic production.

In the same time period, the price of "new"—decontrolled—domestic crude oil has more than tripled, to a current level of about $10 per barrel.

I am gratified that the conferees have now grappled with the central issue of price. And I am particularly gratified that the conference report which we now have before us recognizes the need for a price rollback to a definite price level as the most efficient and most equitable means to relieve pressure on American consumers, while still affording the oil industry the incentive it needs to develop new domestic oil resources.

The effects of higher oil prices are already being felt in the sharply higher unemployment figures recently reported by the Bureau of Labor Statistics, with January recording the largest jump for a single month in 4 years.

This should not be surprising. In the past 3 months alone—since the beginning of the Arab oil embargo—higher oil prices have taken up to $20 billion annually out of the American economy and much of that increase has gone into oil company coffers.

Part of this increase, of course, has been the result of foreign oil price rises, over which we have little control.

But we should not forget that the administration has allowed prices on domestically produced crude oil and refined products to rise by an estimated $7 to $10 billion annually. And these increases have played

an important and devastating role in forcing an economic downturn in this country, by taking purchasing power out of the hands of the American consuming public.

On January 24, I presented a resolution to the Democratic conference and introduced legislation calling for a price rollback on domestically produced crude oil and petroleum products to the levels prevailing on November 1, 1973. At these levels, the average price of domestic crude oil was approximately $4.75 per barrel, above the estimates which many in the industry have given on the price levels needed to stimulate domestic exploration and production.

It is clear that many within the industry as recently as last summer felt that movements in the price of "new" domestic crude oil to the area of $5.50 per barrel would be strong incentives to increase the level of domestic exploration and production. By early November, these price levels have been reached, and the trade press within the oil industry was reflecting a good deal of satisfaction with the prices then in existence.

For example, on October 24, 1973—when the price of old crude was $4.25 per barrel and the price of new crude was about $5.50—John Swearingen, chairman of the Standard Oil Co. of Indiana, stated:

> Recent increases in the prices of domestic crude oil and natural gas have provided additional incentives and additional funds for intensified exploration for new supplies of oil and gas. Our company has embarked upon the most extensive exploration and development program in its history with particular emphasis on the U.S.

The Petroleum Independent, the magazine published by the Independent Petroleum Association of America, in its November 1973 issue quoted a Houston producer-geologist as saying:

> There's no doubt that prospects are for increased drilling. Everybody I know is planning on it. With new oil prices from $5.30 to $6.00 per barrel, there's incentive now to go looking for oil.

And the same issue of that magazine quotes another producer-geologist:

> The oil price rise is definitely a healthy sign. I've never seen so much outside investor money available for drilling. It wouldn't be difficult for one geologist to raise more money than he can intelligently spend.

Clearly, with so-called old oil selling at $4.25 per barrel, and new oil at about $5.75, the prices in existence on November 1 posed no real barrier to increasing our domestic petroleum reserves.

With the beginning of the Arab oil embargo, however, the price of domestic crude oil began skyrocketing upward in response to rises in the world price of oil. In spite of the fact that for 15 years the domestic oil industry had operated on a two-price system, in which lower priced foreign oil was kept out at a yearly cost to American consumers of over $5 billion, we suddenly began to hear that a two-price system simply could not work, and that domestic prices had to rise to what were termed the "free market" prices of foreign oil.

Clearly, however, there is at the present time no free market in the pricing of foreign oil. A classic cartel controls supply, and feels free to charge whatever prices it chooses. This cartel—OPEC— is attempting to bring economic havoc on the industrialized nations of the Western world, and to pretend for an instant that it partakes of a free market is sheer delusion.

In spite of these undeniable facts, the domestic oil industry continues to tell us that prices must rise to world levels.

Now it has become clear that the most effective way to curb excess profits is to control price, and that the only way to bring fuel costs back to reasonable levels is to roll back these prices to a definite level.

I commend the distinguished floor manager (Mr. Jackson) for the speed with which he has moved in bringing back to the Senate a conference report which contains provisions dealing with this central issue of price.

Quite frankly, I would have liked the rollback to have gone further. While I believe that the provisions contained in the conference report are a start in bringing prices back to reasonable levels, we should not be satisfied with the prices which this bill would set.

Over the past few months, we have heard the continued pronouncements from the administration that a $7 per barrel price is what is needed as a long-term supply price to draw forth additional domestic production. Yet the documentation for this assertion has been rather skimpy; indeed, the principal price estimates based on substantial evaluation are those of the National Petroleum Council, which estimated an adjusted price of about $4.55 per barrel as needed to encourage expanded-production.

And the trade press over the months leading up to the Arab embargo makes clear the industry's belief that even the prices contemplated in the rollback section of this bill were above their expectations.

I recognize that within the framework and time constraints of this legislation, the present rollback is probably all that could be obtained. I hope, however, that we will continue to focus attention on this crucial issue of price, and that the justification of the administration will be subjected to the most searching scrutiny if attempts are made to raise prices on new oil above the basic $5.25 level contained in the bill.

And I believe that we should once again give careful consideration to rolling back the price of so-called old oil to the more reasonable price level—$4.25 per barrel—which prevailed before the Cost of Living Council gave the oil industry a $3 billion per year profit increase on December 19 by raising the price of such oil by $1 per barrel.

I also note with some concern that the language contained in the conference report does not limit the categories on which prices could be increased to $7.09 per barrel to so-called new, released, and stripper oil. The conference report indicates that it is the intention of the conferees that increases beyond the basic level of $5.25 per barrel be confined to those categories, and that the required Presidential justification be given in any event. I trust that the administration will not disregard the intent of the conferees in this regard, and that they will not attempt to raise the price of so-called old or flowing crude oil. Any such attempt would be directly contrary to the spirit of this legislation and would, I believe, fail to meet any conceivable standards of justification, including those required under this legislation.

In short, the price rollback provision contained in **section 110** of this conference report is a beginning in bringing some sanity back to the pricing of domestic crude oil. It is unfortunate that a rollback of so-called old oil prices was not included, since the major oil companies produce a greater proportionate share of old oil than do independents,

but the essential thrust of the conference report provision is moving in the proper direction, and deserves support.

In addition to this provision, there have also been substantial improvements in two other vitally important provisions of this legislation.

In particular, I am most pleased to note the improved provisions [Sec. 116] relating to unemployment compensation for workers affected by the energy crisis. This revised section, which makes clear our intent to allow provision of benefits for workers whose unemployment began before the enactment date of this legislation, and for workers whose unemployment is the result of shifts in consumer buying preferences and other similar causes, is a much-needed improvement over the similar provision in the previous conference report. I trust that these provisions will be liberally construed by the administration, and that workers will not be penalized for energy-related actions or decisions beyond their control.

Finally, I am pleased that there have been some improvements in the Clean Air Act provisions of this bill. While still not containing all the safeguards which may be necessary, these revised provisions do improve upon the provision in the original bill, and should offer greater protection to insure that the sometimes competing interests of energy and environment are more successfully harmonized during this period of energy shortage. [Title II.]

Mr. President, I hope that this conference report is approved and this legislation is swiftly signed by President Nixon. There are indications that he will veto this measure because of the price rollback provisions of the conference report.

I hope that the President recalls his words of urgency back in November of last year in attempting to get emergency legislation through the Congress. And I hope that the American people are made fully aware of the fact that it has been this administration, time and again, which has sought to delay progress on this legislation.

This is legislation which the President has asked for. Now, it is legislation which the President threatens to veto. Yet on balance it is legislation which the Nation needs, and which the President can ill afford to reject.

Mr. BAYH. Mr. President, in several respects this conference report is a major improvement over the initial report presented to us 3 weeks ago. I intend to vote for adoption of this revised report and urge my colleagues to join in passing this Energy Emergency Act and sending it to the House for final congressional action.

When the initial report of the conferees was presented to us on January 29, I expressed serious concern regarding **section 116,** which provided expanded and extended unemployment compensation for workers displaced by the energy crisis. The old **section 116** would not have covered thousands of workers in my own State of Indiana, and elsewhere, already unemployed due to the energy crisis. Moreover, the old **section 116** was worded in such a way that there were questions raised regarding which workers who lost their jobs subsequent to enactment would be covered.

Because the energy crisis has already had a severe impact on the economy, throwing people out of work in a variety of industries, it was my feeling that the unemployment compensation section of the bill

should be retroactive. In addition, I felt it was necessary to make clear that the Congress intended to cover all workers affected by the energy crisis, not just the direct victims of specific governmental action.

Thus when the conferees resumed their work following the recommital vote on January 29, I wrote to the distinguished chairman of the Interior Committee (Mr. Jackson) suggesting specific ways in which **section 116** might be improved. The able Senator from Washington, who has done such an outstanding job on this bill and several others necessitated by the energy crisis, took my suggestions to conference. I am pleased to note that the conferees responded affirmatively to my suggestions and the revised report contains a vastly improved provision for unemployment compensation.

The unemployment benefits of up to 1 year will be available to all workers now unemployed due to the energy crisis, as well as to workers who lose their jobs in the future because of the energy problem. Workers are covered regardless of whether or not they normally are covered by unemployment compensation.

Also, to remove any possible confusion on eligibility for the benefits of **section 116,** the revised section specifically says:

> Unemployment resulting from the energy crisis means unemployment which the State determines to be attributable to fuel allocations, fuel pricing, consumer buying decisions clearly influenced by the energy crisis, and governmental action associated with the energy crisis.

In the case of Indiana, which already has severe unemployment due to major shutdowns in the recreational vehicle industry, reduced automobile buying, and other energy-related joblessness, the revised **section 116** covers thousands of workers who would not have been covered under the original conference report.

I would like to express my sincere appreciation to the Senator from Washington, who offered my suggested revision of **section 116** when the conference met, and the other conferees who adopted the clarifying language of the section. This is a far more equitable provision, treating all workers displaced by the energy crisis equally and giving hope to thousands of American families where the wage earner, through no fault of his own, is out of work.

The revised conference report improves on the original report in another important area. I refer to **section 110,** which substitutes a rollback in crude oil and refined product prices for the old section prohibiting windfall profits in the oil industry.

This revision provides desperately needed relief for consumers who have found gasoline, heating oil, propane, and other fuel costs rising beyond all reason. Prices have risen beyond the point necessary to stimulate new exploration and drilling. It is time to stop the unnecessary fuel price spiral. So instead of devising techniques for dealing with windfall profits after the fact, the revised **section 110** forestalls windfall profits by lowering prices directly. This is the best way to help consumers so hard hit by rising prices.

Prices would be brought back to a point which guarantees the oil companies reasonable profits in order to encourage the development of new oil reserves. But the projected price drop of 3 cents a gallon is quite important to consumers for whom soaring fuel costs have compounded months of inflation in virtually every sector of the economy. I do not regard this section as punitive, but I think it does say

to the oil companies that we will not tolerate exorbitant prices and profiteering in the midst of the energy crisis.

In still another important area, the suspension of air quality standards, the revised conference report must be viewed as an improvement over the initial agreement of the conferees. **[Sec. 201.]**

I recognize, as do most Americans, the need to suspend air quality standards in certain cases—where the public health will not be endangered—to permit the use of coal while petroleum and natural gas are in short supply. As I said during our first debate on the conference report on January 29:

> I support the separate section of the bill which directs that coal be used in lieu of oil and gas when possible during the energy emergency. Such action may well be necessary for more than one year, but there simply is no evidence to justify a decision now to push the air quality rules back to 1979.

The revised conference report deals constructively with this very problem, making it quite clear that any delay in implementing air quality rules beyond the current emergency must be subject to review by the Environmental Protection Agency and then only after oral arguments on the proposed exception from existing air quality regulations.

Thus the revised **title II** deals thoughtfully with the legitimate competing interests of meeting our energy requirements and protecting our environment.

It is to the credit of the conferees that they utilized the second meeting of the conference to improve these three sections of the Energy Emergency Act. In all three instances significant progress was made, and any reservations which may have existed regarding the initial conference report have been resolved favorably.

Besides these three main sections, the conference report gives us an opportunity to take several other important steps to deal with our national energy problem:

Authority to limit the export of coal, petroleum products and petrochemical feedstocks is given to the Administrator of the new Federal Energy Emergency Administration. **[Sec. 115.]** Also, the Secretary of Commerce would be required to use his authority to limit exports of these vital products if the Administrator deems it necessary to meet the energy emergency. For more than 2 months I have been trying to get the Secretary of Commerce to use his existing authority to limit petrochemical exports. Domestic industry, especially small businesses, has been hurt severely by the shortage of petrochemical feedstocks and the inaction of the Secretary is deplorable. At last, this bill provides a solution to that inaction.

Recognizing that there are limits to which we can balance energy supply and demand by increasing supplies in the short term, the bill gives the administration needed authority to limit energy demand through mandatory conservation methods. Such conservation may be our best hope for avoiding economic disaster due to the energy crisis.

In a further effort to avoid energy waste, the bill instructs the regulatory agencies to revise their regulations to permit fuel savings in interstate commerce. **[Sec. 113.]**

Since end-use gasoline rationing may be necessary if the Arab oil embargo is effective and sustained, the bill creates the necessary authority for rationing. **[Sec. 104.]**

As part of the overall program of energy conservation the bill provides Federal assistance to States and localities in developing carpool programs. [Sec. 117.]

Since the major, integrated oil companies have used the fuel shortage as a tool against gasoline service station operators who do not follow the company line, the bill contains needed protections for the franchise rights of these small businessmen. [Sec. 111.]

The bill has tough, effective antitrust rules to make certain the oil companies do not act improperly in concert in responding to the energy crisis. [Sec. 114.]

Mr. President, in many respects this is an excellent bill, and a decided improvement over the original conference report. I am pleased to give it my support and hope it will become law in the very near future.

Mr. HANSEN. The price rollback proposed in the Emergency Energy Act is counterproductive and fails to meet its stated ends. [Sec. 110.] A price rollback would have relatively little effect on its main target, the oil majors, who have only recently experienced a profitability improvement over a historically depressed period. Yet, the current profits yield a rate of return which is still low for an industry which must expand production through internally generated funds.

The price rollback can naturally affect only domestic prices and profits. Yet with foreign prices doubling or tripling domestic prices, any further control will drive exploratory incentive abroad. For example, in a year when Gulf Oil reported record sales and profits, its rate of return on domestic assets was only 7.1 percent, against a return of 24.7 percent on foreign assets: Standard Oil of Ohio experienced a rate of return on domestic petroleum equity of 4.6 percent against a return of 79.7 percent on foreign.

But the real tragedy of a price rollback is that it puts a brake on expansion of domestic oil production. Independent producers, who supply about 20 percent of the domestic production but drill 80 percent of the exploratory wells and operate 80 percent of the stripper wells, would be the real target of a rollback. The effect of this price control would be to deprive the independent segment of the industry of approximately $3 billion annually, money sorely needed for new exploration.

Finally, a rollback is really a throwback to less efficient means of extracting our domestic resource. A 5-to-7 dollar-per-barrel maximum discourages secondary and tertiary recovery methods, wasting oil that would otherwise be brought into our domestic supply. Only about one-third of the oil discovered is recovered without the use of water flooding—secondary recovery—or even more expensive tertiary recovery methods. Thus it is possible that rigid price controls over a 3-year period will result in an intensified energy crunch with devastating effects on the economy. In the longer run it will lead to higher prices, because not even the U.S. Congress can repeal the law of supply and demand.

Our national goals of energy self-sufficiency and elimination of waste are frustrated by the price rollback provision. Governmental interference with the free market price mechanism during this time of rapid changes in the industry and the world situation threatens the development of a sound energy base.

Mr. BIBLE. Mr. President, before the conference report is approved as final Senate action on the Emergency Energy Act (S. 2589), I wish to pay a well-deserved tribute to the chairman of the Senate Interior Committee, the Senator from Washington (Mr. Jackson). I would also like to note the outstanding efforts of the Senator from Georgia (Mr. Nunn) in behalf of small business in connection with this measure. To say that Senator Jackson is the author of this legislation is to understate the credit due to him.

On February 4, 1971, Senator Jackson joined with the Senator from West Virginia (Mr. Randolph) to introduce Senate Resolution 45 to authorize a study of national fuels and energy policy. Pursuant to approval of this resolution on May 3, 1971, Senator Jackson's personal leadership has resulted in literally a bookshelf full of studies on the various aspects of our complex energy problem. The Publications List of the National Fuels and Energy Policy study, dated December, 1973, itemizes more than 29 sets of public hearings and 40 prints and reports which were produced during this inquiry over the last 3 years. This probably represents the most comprehensive compilation of information and comment on energy issues ever assembled.

Out of this serious scholarship emerged the conclusion that the Nation must deal with our energy problems in a comprehensive manner. Senator Jackson saw this and acted to propose such solutions.

On October 18, 1973, he proposed S. 2589 as comprehensive energy conservation legislation as a part of this effort. Later, because of his mastery of the subject and experience in the legislative process, the Senator from Washington was able to steer this bill to passage in the Senate on November 19, 1973.

In the crisis atmosphere following the imposition of the Arab oil embargo, the Senator from Washington has been steadfast in working for the eventual enactment of this measure.

The adequacy of energy now looms as America's No. 1 problem. Energy and particularly petroleum is the muscle of American business, industry, and the foundation of our standard of living—both at work and in recreation which is vital to my own State of Nevada.

The Emergency Energy Act will be a milestone in the Nation's efforts to deal with this problem sensibly over the long term.

Another matter close to my heart is the provision for smaller businesses which was adopted by the conference committee as **section 130** of the bill. Especially as chairman of the Senate Small Business Committee, I want to express my appreciation to Senator Jackson for his battle to have this provision for equitable treatment of America's 8½ million small businessmen restored to this bill. The story of this achievement will, I understand, be recounted more fully in a statement by the junior Senator from Georgia (Mr. Nunn) on this subject. Senator Nunn is certainly entitled to commendation for the speed and diligence with which he has been able to grasp small business energy problems and his effectiveness is gaining acceptance of the language now written into this bill.

Small businessmen throughout the Nation should be grateful to Senator Jackson and Senator Nunn. The people of my State of Nevada, and all of the country, owe a large debt of gratitude to the Senator from Washington for initiating, shaping, and guiding into law this vital legislation.

Mr. KENNEDY. Mr. President, I intend to support the energy conference report because I believe many of its provisions are vital to permitting us to cope with the current crisis. However, I believe that the price ceiling set under this bill is still too high for the American consumer. **[Sec. 110.]**

The decision to roll back prices to $5.25 for all crude oil but permit the President the discretion to increase that price by 35 percent still provides a potential for windfall profits to the oil companies.

However, the bill does provide an immediate rollback from the level of prices now being charged for new crude oil production. Oil producers are naturally taking advantage of the current unregulated price situation affecting new oil to obtain prices of more than $10 a barrel. Therefore, there should be an immediate benefit to consumers as a result of the conference report provisions restricting crude prices. Also, any increase proposed by the administration will require public hearings and submission of the justification to the Congress before they take effect.

I would prefer to see the level of old oil prices rolled back to the $4.25 per barrel level of November. The administration decision last December, to add a dollar to the old oil price merely boosted the oil companies' profits and did not provide any incentive to secure a single additional barrel of oil.

I regard the price provisions as a first step in breaking the fuel inflation cycle and I intend to work for a further rollback in crude oil and refined product prices. The price of fuel has led the worst explosion of inflation that this country has witnessed since the Korean war. Last months' soaring wholesale fuel prices bears all too clear a portent of what is yet to come if more stringent price restrictions are not put into effect.

I believe that this second conference report also strengthens the protections for the health and safety of communities in the event the waiver of the Clean Air Act provisions is utilized. **[Title II.]** I am appreciative to the conferees for having recognized the great and legitimate concerns of States such as my own where air pollution is a continuing danger. Although I still question the 1979 waiver and would have preferred a year-by-year determination, the new language, both in the bill and in the statement of managers is encouraging.

Finally, I believe the strengthening of the section regarding employment benefits is essential. **[Sec. 116.]** It directs the State to make the determination whether workers unemployed have been unemployed as a result of the energy crisis. And it then provides for extended benefits for those who have exhausted State benefits and full benefits for those who are not eligible for State benefits. These benefits would continue for up to 1 year.

This provision is vital given the indication of substantial increases in unemployment as a result of the energy crisis. We already have seen a rise from 4.8 to 5.2 percent in the last month and every indication is that additional numbers will be affected in the future. Traveling around Massachusetts, it is clear that the energy crisis already is responsible for many jobless in my State. Our December unemployment rate of 7.3 percent was the worst December on record since 1960.

For these reasons, and because I believe the bill does meet a national need by providing specific rationing authority, by providing the au-

thority to dampen demand through stringent conservation measures, and by establishing by statute the Federal Energy Administration, I will support its passage.

Mr. HELMS. Mr. President, in my judgment the conference report on S. 2589, the Emergency Energy Act, should not be approved by this body. Everyone knows the controversial history of this conference report, the unusual parliamentary proceedings which attended its birth, and the discrepancies which remain even after reconsideration. The distinguished Senior Senator from Arizona (Mr. Fannin) detailed these on the floor the other day, expressing his frustration at the unconventional tactics which surrounded the shaping of this legislation.

It is clear that this is legislation which was conceived in haste, marked up with slipshod recklessness, and which brought us into direct conflict with the wishes of the House of Representatives. Even now it is filled with duplication of effort, ambiguity of authority, and administrative nightmares. I have no doubt whatsoever that it will never accomplish what it sets out to do.

Moreover, I am convinced that the bill is wrong in its substance as well. If we were really serious about energy conservation we would seek every substantial means of cutting down on wasted energy. It was brought out on this floor that forced busing of schoolchildren was a luxury that we could no longer afford in a time of shortage. A substantial portion of this body agreed that it is simply too great a waste of gasoline to continue forced busing at a time when it is proposed to shorten school hours, cut down on heat in schools, and even to close schools for extended periods. The House agreed completely and passed an amendment similar to the one I proposed in the Senate to cut out forced busing.

Yet despite the fact that a substantial portion of this body agreed three times to the proposition, and the other House agreed overwhelmingly, the House amendment was eliminated in conference. I recall a newspaper story at the time which reported—and, of course, I realize that not all newspaper reports are correct—that the distinguished chairman of the Interior Committee had argued in conference that to include the antibusing amendment would delay the bill in the Senate and perhaps prevent it from passing. At any rate, the amendment was deleted. It is also a matter of history that the bill was delayed anyway, indicating that the fears of many Members of both Houses were directed to other parts of the bill.

All of this goes to show that we are perhaps not really serious about the energy shortage. Yet the bill itself moves to involve the Federal Government more heavily in the decisionmaking about energy sources and use. It moves us toward rationing, it moves us toward Government control of personal mobility, and it moves us toward Government control of the essential business decisions of private enterprise.

Everybody is properly concerned about the energy crisis, with its shortages of gasoline, fuel oil, and gas. But, the last thing we need, and the worst thing that could happen, would be for the United States to move toward a nationalized oil industry. Yet, in this moment of frustration, that suggestion is being heard more and more often. It will be a sad day for America if it ever comes to pass.

It is not popular to dispute the loud political condemnations of the oil industry that are being heard with increasing fury. It is a natural

desire on the part of the public to want to hear us politicians propose easy answers to difficult problems. The trouble is, there is no easy answer to difficult problems. The trouble is, there is no easy answer to this problem. We are not going to solve it by Federal controls, or by finding a political scapegoat. We have got to face up to the hard facts of life.

For many years now, our Federal Government, by one device after another, has been limiting the exploration for new domestic sources of petroleum. Therefore, production has been limited. Instead of developing new sources at home, we have been turning to foreign countries, and importing larger and larger amounts of oil. Our shortsightedness is now catching up with us. The crunch is on.

I hold no brief for the oil companies. I do not own even one share of stock in any oil company. And I do not like to pay high prices for gasoline any more than any other citizens does. Still, in fairness, I think the American people ought to bear in mind that they still have more fuel available to them, at less cost, than any other country in the world.

My own view is that we ought to get busy with exploration for more sources of domestic petroleum, build some new refineries, and stop all of the name calling. Otherwise, no matter what laws Congress passes, or what regulations the Federal Government imposes, the situation is going to get worse.

We ought to compare our situation, unpleasant as it is, with that of any other country in the world. Then we would be made aware of a fact that many people are forgetting—that the free enterprise system of competition is our best hope. Indeed, it is our only hope.

I realize that it is popular to vote to roll back prices. **[Sec. 110.]** But I say we must look to the future. Such a move can have no other result than a further reduction of exploration and production of petroleum, thus further delaying the hope of an adequate supply in the months and years ahead.

I am sure I will be criticized for these thoughts, but I am convinced that there is no adequate substitute for the free enterprise system. Only through production and competition in the marketplace can we hope to enjoy lower prices for the goods we buy, whether they be gasoline, food, or whatever. We cannot improve upon the free enterprise system.

Mr. Domenici. Mr. President, I rise today to give my reasons for voting to recommit this conference report and if necessary, against final passage of S. 2589. I reach these decisions only after a great deal of serious deliberation because, as I have publicly stated on several occasions, this bill has several features that are essential in combating our current energy dilemma.

Illustrative of these essential provisions are those which allow limited modification of the Clean Air Act for both stationary and mobile sources, prohibit discrimination against any class of user of petroleum products, protect franchised gasoline dealers/distributors in their business relations with their suppliers, and give the executive branch the authority to deal effectively with specific kinds of energy shortages.

As essential, as vital as these and other provisions are, Mr. President, the conference version of this bill contains a fatal flaw. That fatal flaw is a provision to put a ceiling on domestic crude oil prices which is irrational and self-defeating when examined from the viewpoint of

trying to make petroleum products meet the demand for those products.

Mr. President, this bill would drastically decrease exploration, development and production of domestic crude oil, reducing the supply, while at the same time it would lower consumer prices, increasing demand. That combination of effects is absolutely wrong, it defies understanding and it will work to the detriment to the consumer in the long run.

Another point, Mr. President, is that it does not fit into our efforts to gain long-range energy independence. This Nation, represented so brilliantly by Dr. Kissinger, is attempting far beyond the normal call of duty to lessen tensions in the Middle East and to achieve a durable and lasting peace in that volatile part of the world. There should be no doubt that a legitimate expected benefit from those tortuous negotiations is to encourage the lifting of the Arab oil embargo and increase the availability of foreign oil for our use here in the United States.

In the face of this diplomatic venture, Mr. President, it is almost criminal to put a ceiling on American crude at one-half or less the price of foreign crude. The price ceiling would clearly discriminate against the small domestic producer who has discovered about 80 percent of new domestic oil in recent years and it will put those domestic producers at an even greater disadvantage in relation to international oil giants who produce or own foreign crude and bring it into this country at prices which are totally uncontrolled. The comparative result is that even new domestic crude would have a base price of $5.25 a barrel, subject to increase for certain unspecified categories, while foreign crude is right now bringing up to $13 a barrel. This situation is, in a word, ludicrous, Mr. President.

I feel so strongly on the discriminatory aspect of this bill that I am today introducing a separate measure to exempt from price controls all crude oil produced by independent domestic producers.

Additional reasons for that separate legislative initiative are contained in my introductory remarks in today's Record.

All too often, Mr. President, we in Congress are faced with issues which appear so uncomplicated, so easy and so beneficial on the surface. But when the surface is drawn away and the underlying complexities revealed, other courses of action are required. By then, unfortunately, it is difficult to pass a rational judgment without being pasted with some ridiculous label. The proponents of this bill are quick to point out its prospective immediate benefit to consumers. So good, so far, but what will consumers do when domestic production falls and higher priced foreign crude, as a great percentage of total consumption, forces the price back up—a movement no one in this country can control or resist? What will consumers do, Mr. President, when foreign countries on the least whim or caprice decide to withhold their crude at any price? Where will the proponents of this bill be then? Who will they be pointing to as the culprit and how will they appease the indignant anger of the consumers whose cause they now so righteously promote?

A look beneath the surface has caused me to take this strong stand and make this strong statement. I am convinced the path I have chosen is correct. I urge all my colleagues to seriously and earnestly consider the points I have raised.

Mr. RANDOLPH. In discussing **section 106** on February 7 with the floor manager for this conference report, the use of new technologies and coal derivatives, such as synthetic gas and oil from coal and solvent refined coal, were determined to be within the term "by-products" of coal, as that term is used with respect to existing facilities. By way of further clarification, however, it would seem clear that it was the intent of the conferees that all such products or derivatives from coal are included within the broader term "coal" as used in section 106, since that section seeks to make such fuels available for not only existing facilities, but as well for plants now in the planning process. Would the Senator from Washington care to comment?

Mr. JACKSON. I would be happy to comment. Since the purpose of this section is to stretch available fuel supplies, it was obviously not the intent of the Congress to limit the term "coal" to its most narrow definition. This was made explicitly clear with regard to fuel use in existing plants. Yet the omission of explicit reference to coal by-products in the discussion of plants in the planning process was not intended to imply that they should be excluded. The conferees intended that both coal and coal by-products be considered for consumption by powerplants in all phases of development.

Mr. ROTH. Mr. President, I am very concerned about the petrochemical feedstock shortage and its serious impact on our domestic economy should this shortage continue. I endorse the language the conference committee has included in **section 107(c)** requiring the Administrator to exercise whatever authority he has to alleviate shortages of petrochemical feedstocks and report back to Congress on this problem. I would, however, appreciate the clarification of two points.

Although petrochemical feedstocks are not defined in **section 107** or in the associated report language, a good definition of petrochemical feedstocks does appear in the report language in **section 115**—Exports. I presume that the committee intends this definition to also apply to **section 107(c)**—is that correct?

Mr. JACKSON. The Senator is correct. The conference committee's definition of the term "petrochemical feedstocks" is set forth as follows on page 70 of the conference report:

> In using the term "petrochemical feedstocks" the Committee intends to identify the basic hydrocarbon derivatives of crude oil such as propane, butane, naphtha, olephins such as ethylene and propylene, aromatics such as benzene, toluene and the xylenes, extender oil used in the manufacture of rubber, and aromatic oils used in the manufacture of carbon black.

Although this definition was specifically addressed to the conference substitute for **section 115**, it does reflect the intent of the conferees throughout the report, including **section 107(c)**.

Mr. ROTH. The language of **section 107(c)** instructs the Administrator to exercise any authority he may have to take steps to alleviate shortages of feedstocks. Could you describe what some of these steps might be and do they include allocation?

Mr. JACKSON. Allocation is one of the possible actions that could and should be considered. The Administrator can take feedstock production into consideration in the assigning crude oil allocations and adjusting gasoline production. He can also allocate certain feedstocks themselves. In discussing the allocation of "distillates," the conference report on

S. 1570, the Emergency Petroleum Allocation Act of 1973, that allocation authority was discussed as follows:

> It is the committee's intent, however, that this term also reach to include naphtha and benzene so as to require the allocation of these products as may be necessary to accomplish the objective of restoring and fostering competition in the petrochemical sector of industry. In this respect the conference committee wishes to emphasis that, in expressing congressional concern with fostering competition in the petrochemical industry, the committee intends to also identify petrochemical feedstock needs as important end-uses for which allocation should be made.

Another alternative is the use of price incentive, although in the short term for the hard-pressed end user the use of this tool is uncertain. I share the view that the Administrator may well need further authority in this area and that is why we have included the requirement that legislative recommendations be submitted to the Congress within 3 days.

Mr. MAGNUSON. Mr. President, although I will vote for this energy emergency legislation, I must express reservations with **section 118** dealing with the importation of natural gas. This provision was included in the House but not the Senate version of the legislation, and I think it is most unfortunate that it is included in the conference report.

The proposed section would empower the President to authorize shipments of liquefied natural gas—LNG—to the United States from a foreign country. Under present law, only the Federal Power Commission is authorized to issue a permit for such imports. The Federal Power Commission holds hearings on the application to determine that the importation is in the public interest. It carefully considers supply and demand, pricing, technical feasibility, and national security impact. But it must also examine an environmental impact statement and pay particular attention to important safety considerations. Inasmuch as the Federal Power Commission has such expertise to evaluate applications, it seems foolish and contrary to the public interest to invest this authority in the President.

As drafted, the proposed provision would permit short-term LNG imports without adherence to the environmental impact statement requirements of the National Environmental Policy Act. Natural gas is clean burning and an environmentally desirable fuel, but in liquid form it is an extremely hazardous substance. To allow it to be shipped, even in small quantities, into congested ports near densely populated areas, such as Staten Island or Boston without the closest scrutiny of accident prevention measures, alternate import sites, and adequate, safe storage facilities poses a threat to property and citizens in that region. The hazards are present, and the Senate Commerce Committee is studying their nature and control. The committee plans to soon hold hearings on the crucial safety issues involved with the importation of liquefied natural gas, but now, in light of the dangers involved, such importation applications should not be exempted from a thorough safety assessment.

Liquefied natural gas is natural gas which has been cooled to −260° F. and condensed to one six-hundredth of its original volume. In this liquid state, it is highly flammable, and under certain conditions, explosive. When LNG is spilled on water, experimenters have found that there is a flameless explosion or "little pops." They cannot be

explained. When the substance is spilled on polluted waters, such as in a typical port, there is likely to be an explosion. LNG expands geometrically to several times its original volume when it is spilled on water, and a vapor cloud is formed. This cloud can travel several miles downwind and it is highly flammable. Nearby ships and communities are threatened. It would only take one "emergency" shipload of LNG to cause havoc, and yet this proposed provision would authorize such a shipment without any safety considerations.

Shipment by shipment is a particularly poor choice of words in this proposed section, because it is unclear whether this term could apply to a series of shiploads. In fact, an entire gasfield could possibly be contracted for with such vague terminology. The Federal Power Commission interprets this proposal to apply only to short-term imports, but even this is uncertain. There are a number of long-term controversial LNG importation applications pending before the Commission which should not suddenly be approved by Presidential order.

I would like to insert in the Record a copy of a letter addressed to me by Chairman Nassikas expressing the Federal Power Commission's dissatisfaction with the provision. I hope my colleagues will join me in my concern for the safety and lives of affected citizens should this provision be enacted.

There being no objection, the letter was ordered to be printed in the Record, as follows:

FEDERAL POWER COMMISSION,
Washington, D.C., January 10, 1974.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of December 14, 1973, for comments on **Section 118** of the Energy Emergency Act, S. 2589 as adopted by the House contained that provision; the Senate version of the bill did not.

The proposed provision would add a new Section 9 to the Emergency Petroleum Allocation Act of 1973 which would empower the President, notwithstanding Section 3 of the Natural Gas Act (15 U.S.C. § 717b) or any other provisions of law, to authorize shipments of liquefied natural gas (LNG) to the United States from any foreign country. This authority would not apply to shipments in transit on the date of expiration of the Act and which had not been previously authorized.

We interpret the proposal as a grant of LNG import jurisdiction to the President concurrently with that held by the Federal Power Commission under Section 3 of the Natural Gas Act. Section 3 requires the Commission to issue an order authorizing importation (or exportation) unless, after opportunity for hearing, it finds that the proposal will not be consistent with the public interest. In passing upon import applications the Commission considers data regarding the economic and technical reasonableness of the proposal as well as data on environmental impact, including safety considerations. Inasmuch as the Commission has expertise in exercising such import jurisdiction, we suggest that it would be expedient to have the authority to grant temporary emergency orders contemplated by the proposal vested in the Commission rather than in the President.

LNG import applications filed with the Commission involve either long-term or short-term contractual commitments. Long-term imports are characterized by 20- to 25-year contracts for substantial quantities of LNG (see annexed Table I); short-term imports are usually for one or two shipments over a limited period of time (see Table II). While it is not clear, we assume that the proposal is intended to cover short-term imports only. The Commission would favor the procedure proposed regarding single cargoes of short-term shipments but would oppose such expedited procedure for long-term imports. To clarify the evident purpose of the proposed change to authorize spot shipments of LNG urgently

needed to maintain adequate local supplies, we recommend that the term "shipment-by-shipment" be changed to "shipload-by-shipload". This would insure that a separate public interest determination will be made for each shipload of LNG for consistency with the energy emergency upon which the legislation is predicated.

In addition, the bill should be amended to provide that if the President (or the Commission) exercises the authority to authorize an import that Commission review will not be necessary under Section 7 of the Natural Gas Act where the sale or transportation of the gas for resale in interstate commerce is contemplated or facilities for such service will be required. Expedited action approving short-term imports of the type authorized by the proposed legislation could be effectively frustrated if the public convenience and necessity certification procedures and standards are applicable to the gas once imported.

Presumably, as drafted the proposed legislation is intended to permit the authorization of short-term LNG imports without adherence to any applicable environmental impact statement requirements of the National Environmental Policy Act (NEPA). In order to avoid time consuming litigation, we believe that any waiver of NEPA requirements should be specified in the legislation.

In view of the administrative steps now required to be taken by the Commission in connection with import applications, it is evident that the proposed amendment may have an expeditious effect. The minimum time required for the processing of an LNG import application which does not involve a formal hearing is about six to eight weeks. The necessity for a public hearing can add months to the processing required. A procedure which expedites approval of spot imports should improve the ability of American gas companies to take advantage of available shipments as they arise.

In the event the emergency power is given to the President, we suggest it would be desirable that in making a finding of public interest that this agency should be consulted prior to the exercise of the power granted in the section. Accordingly, we recommend the provision be revised by inserting after the word "President" the words "in consultation with the Federal Power Commission".

Thank you for the opportunity to comment on this proposed legislation.

Sincerely,

JOHN N. NASSIKAS, *Chairman.*

Mr. MCGOVERN. Mr. President, this afternoon the Senate will vote on whether to send the Emergency Energy bill back to conference for a second time. At issue will be the price rollback formula the conferees have inserted in place of the "windfall profits" provision contained in the original bill. **[Sec. 110.]**

There may be strong reasons for adopting the conference report, as, for example, the unemployment compensation provisions for those who have lost their jobs due to the energy crisis. But the so-called rollback provision is not as great as it should be.

Today the United States produces approximately 9.2 million barrels of crude oil a day. About 71 percent of that oil is flowing from fields developed prior to 1973 and is controlled at a price of $5.25 per barrel. The remaining 29 percent is exempt from price controls on various grounds and sells for about $9.50 a barrel. Only about one-third of this exempt oil is "new"—from fields not flowing in 1972 or before.

Under the conferees formula, the price for all domestic crude would be nominally set at $5.25 per barrel. But the President is expressly given the power to raise the price as much as 35 percent—for a maximum ceiling of $7.09 per barrel.

The practical effect of this proposal therefore is to impose roughly a $2.41 reduction on the 30 percent which is not presently controlled. No change in the price of the other 70 percent is mandated. Indeed, further price increases on this "old" oil totaling nearly $2, or 5 cents a gallon at the consumer level, are permitted.

I have reservations about the conference approach for three reasons. First, the plan would leave intact the President's recent decision to raise the price of controlled or "old" oil by $1 per barrel—from $4.25 to $5.25. Second, the administration would retain the right to further increase the price of old oil by nearly $2 more. And third, the conference formula would result in only small savings to the consumer.

The Consumer Energy Act of 1974 which the Commerce Committee is considering this week and will shortly report out on behalf of a bipartisan group of Senators including myself offers the consumer a sounder and better thought out policy. It would roll back prices to the December 1 level and permit a rise in prices only to reflect rising costs or to give incentives to independent producers and wildcatters. It would not permit the majors to reap the windfalls possible under this bill.

During the last 15 weeks, consumer fuel prices have increased on the average approximately 10 cents a gallon. In some cases, particularly propane and home heating fuel, consumers have paid as much as 200 to 300 percent more this year than last year.

At the same time, the profits of the major oil companies have gone up even more rapidly than fuel costs. During the first 9 months of last year, the 31 largest oil companies posted a 47-percent increase over the comparable 1972 period and a 63-percent increase in the third quarter alone. For the largest companies, the results were even more dramatic: Exxon's third-quarter profits were up 81 percent; Gulf's, 91 percent. Although the final 1972 figures for all companies are not yet in, one company, Gulf, reported a 153-percent increase in its fourth-quarter profits and a full year profit rise of 79 percent. Exxon posted a 60-percent overall profit increase last year.

Although the majors stress that a substantial portion of their new riches come from foreign operations, the rising price for domestic crude has been a significant factor. In 1958, domestic crude sold for an average of $3.09 a barrel. The price of crude which averaged less than $3 a barrel during the 1960s increased gradually to about $3.40 in late 1972. On May 15, 1973, the administration permitted a 35-cent increase in the then controlled price of $3.90 per barrel. This new $4.25 price was further increased by executive fiat to $5.25 last December.

Thus, under the Nixon price controls, crude oil went up 36 percent in less than a year. That $1.35 increase was greater than the 81-cent rise during the prior 15 years.

According to Ervin Wolf, chairman of one of the largest exploration companies, and other industry experts:

Approximately 80 to 90 percent of all the old oil which was recently increased $1 per barrel is owned by the major oil companies.

He estimates that the dollar increase was worth approximately $30 billion to the majors on their existing inventory of crude oil. It must be stressed that this oil was found and developed years ago. It would have continued to be produced without any increase in price.

As Senator Johnston of Louisiana pointed out in debate on February 7, this dollar increase amounts to a pure windfall profit to the major oil companies. It was granted for wells which were developed and flowing prior to 1973. For these wells there is no exploration or development risk. Those costs were incurred 10 and 20 years ago. The

only present costs are in pumping it up from the ground which Business week sets at $1.10 a barrel and many other experts even lower. The rest is pure unadulterated profit—at present prices more than $4 a barrel.

As Senator Johnston pointed out, an increase in the price of old oil is by no stretch of the imagination an incentive to produce new oil. And in a colloquy with him, Senator Jackson admitted that the dollar increase was, and I quote, "clear windfall."

And so I ask with Senator Johnston:

> Why not roll back the price of old oil—which represents approximately 70 percent of domestic crude—to its December price of $4.25 and eliminate the $1 per barrel windfall that was allowed despite the fact that it is not really a viable incentive to produce more oil?

My second objection follows logically from the first. If, as Senator Jackson has said, the dollar increase on old oil was "clear windfall" why should the President be given specific authority to grant nearly $2 of future increases?

The conference report says that it expects this new authority to be used only with respect to newly produced crude and oil extracted through expensive technology such as secondary and tertiary recovery. But the same could have been said before the December price increase.

Moreover, the administration has announced plans to gradually increase the price of crude to $7 per barrel over the next 3 years in connection with its so-called windfall profits excise tax. As Treasury Secretary Shultz testified before the Ways and Means Committee on February 4:

> A tax which bites hard on immediate price increases (but would) not interfere with the production of needed oil supplies if it gradually phases out so that *after three years there would be no tax on oil prices at around $7 or less per barrel.* (emphasis supplied).

Under the mechanics of the plan the Secretary described, the base not subject to the proposed tax would be increased by 80 cents a year for a nontaxed price of $7.15 in 3 years. His precise calculations furnish a good benchmark against which to judge the administration's intentions regarding oil price control policies.

In the face of those statements, I do not see how the conference can be so sanguine about future increases in old oil prices.

The third question is how much the proposed limited price rollback would save the consumer. Senator Jackson has estimated that it would reduce consumer prices by 4 cents a gallon or more and save the consumer upwards of $4 billion. Yet the unanimous testimony of expert witnesses before the Interior Committee just 2 weeks ago was that a 25 percent decrease in the price of uncontrolled oil—roughly equivalent to proposed formula—would save the consumer perhaps 1 cent a gallon.

The administration estimated that the December dollar increase on 71 percent of domestic production would increase fuel prices by 2.5 cents per gallon and cost the consumer approximately $2.5 billion a year. On that basis a $2.41 reduction on 29 percent would save the consumer about $2.3 billion which works out to about 2.3 cents per gallon.

But under the price control regulations, the fuel presently being consumed is price based on the average cost of crude oil in the refiner's

inventory at the time the fuel was refined. In general, fuel consumed today is based on crude refined 30 days ago or more. In many cases that crude was purchased weeks or months before at substantially lower prices. Expensive Arabian crude, for example, takes 45 days just to be shipped in tankers to the United States.

Since uncontrolled crude sold for less than $7.00 60 days ago and about $8.25 30 days ago, the effect of the conference proposal would be at best to stabilize fuel costs at their present levels. In some cases, costs will continue to increase because of the higher cost of foreign crude. In others, it will decrease because of greater stability in foreign prices. This would depend on the source of oil for individual companies contracted for weeks and months ago and explains why Exxon recently raised its price on the same day that Amoco announced a reduction.

I point this out, Mr. President, because of the danger that the public may again be disappointed with the Congress when the promised price reduction fails to materialize, or is less than expected, in the event the conference report is adopted.

The better alternative—is:

First, to roll back the $1 windfall on old oil the President granted last December;

Second, to set a price for bona fide new oil and stripper well production at a level which will insure expanded production and protect the consumer from price gouging;

Third, to remove from the administration the authority to increase the price for old oil;

Fourth, to carefully prescribe the conditions under which the price for new and stripper oil can be increased, subject to congressional concurrence;

Fifth, to abolish the administration's so-called release program under which old oil is exempted from price controls;

Sixth, to repeal the congressionally imposed exemption for stripper wells from price controls which is generally admitted to have been a mistake by the administration as well as the conference committee; and

Seventh, to require these cost savings to be passed on to the consumer.

Most of these proposals are clear from what I have said regarding the conference report.

The price for new oil adopted in the Magnuson bill is about $7 per barrel. That is the price the administration and the industry originally said was adequate to provide a sufficient incentive for the development of new sources such as oil shale and finance new expensive recovery techniques and deep wells. Predictably enough their estimates have drifted upward with the price.

I am not suggesting an absolute limit of $7 for new oil. What I am suggesting is a present $7 price which could be adjusted upward if the President showed proper reasons for doing so and the Congress concurred.

So far as released oil is concerned, I can see no justification for it. Under current price control program, the administration in effect permits one barrel of old oil to be decontrolled for each new barrel of oil produced from an existing field. It seems to me that today's present high prices for new oil, even if they were rolled back to the $7 level, furnish a sufficient incentive for producing the new oil. There is no justification now for adding a "bonus barrel."

These seven steps would permit us to return to the consumer price levels which prevailed last December plus the increased costs of foreign crude since then. Today we import nearly 40 percent of our crude and will continue to do so in the months ahead.

I am hopeful that Secretary Kissinger will succeed in his efforts to reduce the world price for oil. Recent statements by Mr. Yamani of Saudi Arabia and other spokesmen of oil exporting nations to the effect that the present price risks a worldwide depression offer some hope that this will be done. If this is done, consumers will benefit not only from lower foreign crude prices but less pressure on domestic prices as well.

But while we wish the Secretary well in his travels, let us at least hold down oil profiteering at home in a national way. We may not yet have the ability to affect foreign prices, but we have the obligation to restrain domestic prices.

In conclusion, Mr. President, let me stress that I believe that the conference has found the right idea for dealing with the oil price—profits problem. We should roll back prices—the question is which oil and how far.

Further, we should be particularly careful that the Congress does not put itself in the position of promising the consumer a greater rollback than the bill delivers.

Although I regret that the price rollback in the conference report is not greater than it is, I have decided to vote for this measure and against recommitting it on the grounds that it is probably the best bill we have any chance of getting signed into law this time. Perhaps we can do better at a later date.

Mr. Montoya. Mr. President, in a few moments, I shall vote to recommit the conference report on S. 2589. There has been a great deal of concern about this bill for several months now. It has come to be viewed by many people as an essential ingredient in the solution to our energy crisis, and the President has called for its enactment. Why, then shall I vote to send it back to conference and why do I urge my colleagues to do likewise?

It occurs to me, Mr. President, that this bill should pass if it could meet several tests. It should pass if it represented a real solution to our energy problem. It should pass if it provided the President with authority which he needed instantly, which was not available to him now, and which could not be provided in any other way. And, if those conditions are met it should pass even if it meant that certain States—even if it meant that New Mexico—might be harmed. Under those circumstances it should pass because the interest of the entire Nation, of all the 50 States, demanded it. But, Mr. President, I think this bill cannot pass those tests. I think the debate of the past 4 or 5 legislative days has shown that. I think the information we have received in our offices and the information we have seen for ourselves as we have survived this crises thus far have shown that. Moreover, the bill would, in fact, hurt many States, my own included. That being so, I conclude that this bill should go back to conference for revision.

The first test I spoke of concerned the Nation. Was there in this report a solution to the energy crisis? I think not. This bill does provide a price rollback, and it is estimated that if we pass this bill we might expect to spend 1.6 cents to 4 cents per gallon less than we would

otherwise. Now that is a worthy objective, but what are its costs? Its costs, I fear, are a higher price for gasoline in another year or so. Why would that be? It would be because no one is going to go out and risk his capital to drill an oil well which, even if it is successful, is going to provide him with a return of only 1 or 2 percent on his investment. It would make more sense for someone to put his money in the bank than it would to drill an oil well under such circumstances, and money in the bank is not going to provide us with the petroleum which we will need.

Mr. President, the small independent oil producers in my State are ready to begin drilling again. There has been a long decline—a decline at a time of a shortage—in the amount of oil which has been produced in our State. Between 1970 and 1973 alone, oil production in New Mexico declined 18 percent from 118,412,374 barrels to 100,785,080 barrels. The independent oil people are anxious to reverse that trend, but they tell me that their efforts will fail if they are forced to accept a price of $5.25. or $4.91 as would be the case in the northwestern part of New Mexico. They say they will not risk their money if there is no chance at all of possibly earning more than 1.5 percent. If we produce less oil instead of more. the price is surely going to go up.

One of our great national goals today is independence in our fuel supply, and part of that independence in fuel supply is independence in oil. We can produce more oil here, but if there is a price rollback in the name of saving 1.6 to 4 cents a gallon, we are not going to produce more, we are going to produce less. The demand for the oil will not change. It will still be there, and it will be met. It will be met, however, with foreign oil at a price which we will have no way under heaven of controlling. The foreign price now ranges around $12.15 a barrel. Some oil has sold for $20 a barrel. I think it is better to pay $10.35 a barrel for American producers to produce American oil than it is to pay higher prices to Arab countries. In one case we are buying our economic freedom; in the other case, we are paying someone to take us and hold us for ransom.

The second test was whether this conference report provided to the President any authority which he needed instantly and which could not be provided to him any other way. The answer to that question is also no. The President has a battery of laws which he can employ if he wishes to do so. He has the Defense Production Act, the Economic Stabilization Act, and the Petroleum Allocation Act. He and Mr. William Simon have already used the authorities contained in these acts to good purpose. They have not demonstrated that there is a pressing need for additional authority and, unless there is, I do not think the Congress should give it to them. We have spent a whole year trying to regain some congressional authority that previous Congress let slip away down Pennsylvania Avenue. We had to fight very hard to pass the War Powers Act and we are still fighting to give the Senate the right to pass on the confirmation of the Director of the Office of Management and Budget. Does it make sense to say that we will take back the war making power and the power to control the budget and yet give away the power to deal with the energy crisis? I do not believe that it does.

Some Senator may say to me, "But what if an emergency arises? What if the President decides that he needs the authority to ration

gasoline?" My answer to that Senator is, if the President has a special request for special authority, let him submit to the Congress. I believe that the Congress will honor the request. I believe that on a piece by piece basis the Congress will act very quickly to give him the authority which he honestly needs. Just think back to the months of October, November, and December. During that period the President asked for six pieces of energy legislation and we gave it to him. Some of that legislation we passed in record time, and I am confident that in the face of emergency we would pass it again or pass similar legislation with just as much haste.

Mr. President, earlier I said that if the bill could pass the two tests I have mentioned then the Senate should pass it even if it meant that certain States were going to be harmed. The bill does not pass the tests, but it does hurt my State of New Mexico and it hurts many other States as well. That being so, I think it is mandatory that we return this conference report for further revision.

Let me tell my colleagues a little about what this bill means to the State of New Mexico. We are an oil producing State. We are also a very poor State. For us, the oil which comes out of the ground is a special blessing because we tax it rather heavily and we use the revenues from those taxes to run our school system. In 1973, we collected $45.5 million worth of State royalty, school, severance, conservation, and ad valorem taxes from the oil companies. In 1974, we are going to collect at least $72.3 million from them if the price of oil on the average settles down at about $7 per barrel. If we roll the price back to $5.25 per barrel, however, we are going to collect only $52.1 million. If we roll these prices back, we are going to have $20 million less to run the schools in New Mexico and we are going to have to raise our property taxes. A home owner in Albuquerque who now pays $250 per year on a three bedroom house is going to have to pay $600 or $700. I do not think he is going to find it much of a bargain to be able to pay 2 or 3 or 4 cents less per gallon of gasoline while at the same time he has to pay $200 or $300 or $400 more in real estate taxes. That, in a nutshell, is why I think this bill should be returned to conference.

I might add that there are a few other reasons as well which I want to touch on only briefly. Just this past weekend, we received a report from the American Public Health Association which states that if we proceed with plans to convert powerplants from oil to coal, we are going to have an increase in heart attacks in this country. We are going to see 500 people die each year who would otherwise have survived. We are also going to see almost 17,000 children suffer serious respiratory attacks which will require medication. I think that the conference should take this report into consideration.

Mr. President, the situation today, on February 19, is somewhat different from what it was in November when the energy crisis was new and when this legislation first came before the Senate. At that time no one knew how serious the crisis would be. No one knew whether we would have a severe or a light winter. No one knew how long the embargo might last. To some extent, we have learned since that time to live with this crisis. We have learned, at least, that the passage or the failure of this bill today is not going to worsen or lessen the crisis. That being so, I think the Senate would be doing a disservice

to the country if it pushed forward and failed to return this bill to conference. I think we have an obligation to the country to proceed expeditiously but also thoughtfully.

I urge a recommittal of the conference report.

Mr. BUCKLEY. Mr. President, I rise again, for the third time, in opposition to the emergency energy legislation conference report. We should keep in mind that we are talking here, not of the "outrageous" profits of the international oil companies, which have made those profits largely overseas; we are talking about the economics of domestic energy and about seeing that we solve our energy problems.

Once again, Mr. President, we are asked to approve emergency energy legislation that has been reported out by the Joint Conference Committee. Once again, we are confronted with legislation that not only vests an improvident degree of authority in the Executive but will have the clinical effect of compounding our energy shortages rather than moving in the direction of emancipating us from an excessive dependence on foreign oil. This legislation will provide the Executive with authority for spreading the current misery in an equitable manner. It will do no one thing to relieve us of that misery by encouraging the discovery or production of a single additional barrel of oil. On the contrary, the provisions euphemistically described as "prohibition on inequitable prices" will force the shutdown of marginal production while postponing indefinitely plans for extending the productivity of depleting fields. It will also disqualify from exploration the harder, higher bulk prospects whose energy cannot be justified at the price levels mandated in the bill under consideration. We should have learned from our experience with price controls that we cannot legislate people into producing goods at a loss.

It was once the proud boast of the U.S. Senate that it was the world's greatest deliberative body. The steamroller atmosphere that attended the adoption of the price rollback provisions demonstrates how far the Senate has wandered from the days when it could claim to have based its legislation on a rational rather from an emotional examination of our national needs. We make a mockery of the hearing process when we summon expert witnesses from across the Nation apparently more for purposes of appearance than for any serious desire of informing ourselves about the issues before casting legislation in concrete. What is absolutely clear from the record is that the principal sponsors of the price rollback had reached their conclusions before hearing the witnesses; and that there was no intention to allow time for their testimony to be examined and weighed.

That I do not exaggerate is clear from the statements made by the chairman of the Interior Committee at the beginning of the first and second days of hearings. At the opening of the first, and before hearing any of the evidence from any of these witnesses, the distinguished chairman stated:

> By all evidence we have seen Americans are paying unconscionable and unnecessarily high prices for essential petroleum products. Price increases which result in enormous profit gains amount to nothing more than the exploitation of the American people. This exploitation must be stopped. A rollback of petroleum prices to more reasonable and realistic levels is absolutely essential. That is the subject of these hearings today.

Parenthetically, Mr. President, I wonder why the distinguished chairman did not show this same compassion for American consumers who have seen the price of wheat rise by more than 100 percent and corn by more than 60 percent, keeping in mind that food constitutes more than 20 percent of the cost of the average family's budget as opposed to 6 or 7 percent for energy.

The following day, on Friday, February 1, the chairman announced:

> Before hearing from our witnesses this morning, I would like to announce that on Monday, at ten a.m. [i.e., in three days time], Chairman Staggers and I will reconvene the Conference on S. 2589, the Energy Emergency Bill. At that time, we will urge our fellow conferees to consider including in the bill a price rollback and price ceiling provision for crude oil and petroleum products.

During the third day of hearings, on Saturday, February 2—just 2 days before the conferees recommended—a panel of petroleum economists drawn both from the academic and petroleum communities took the stand. It was their unanimous verdict that the problem of pricing was so complex, the dangers to the consumer in making wrong decisions so large, that it would be irresponsible—I repeat, Mr. President, irresponsible—to proceed with any provision for the rollback of prices without the most careful marshaling of the facts and a most serious analysis of the potential consequences. Unfortunately, no more than 2 of the 21 conferees were on hand to hear this testimony.

It was pointed out that even if the price of all uncontrolled crude oil—that is, stripper and "new" oil—were to be rolled back to a price of zero, the net effect to the motorist would be a saving of no more than 5 cents per gallon of gasoline. On the other hand, to hold prices below optimum levels would have the effect of discouraging that massive investment in exploration and development, in gas liquefication and gasification, and in the recovery of oil from shales that alone will enable us to achieve our stated goal of a reasonable degree of self-sufficiency by the mid-1980's; an investment that would average more than $60 million during each of the next 11 years.

Mr. President, I cannot see the logic that on the one hand insists that we must lift price restraints from agricultural products so that farmers will have the incentive to increase supplies to meet demand, while on the other hand insisting that the way to meet our domestic energy needs is to clamp a price lid that will discourage the search for new oil and the production of marginal fields on which we currently depend for so large a percentage of our domestic production. The fact that 13 percent of our current oil comes from wells averaging four barrels per day should be warning enough to anyone familiar with the economics of producing oil of the effect on the consumer of this attempt to save him 2 or 3 cents per gallon on the cost of gasoline. The effect will be either to require our motorists to cut back still further on their consumption of gasoline or to require them to pay the far higher prices commanded by imported petroleum.

Mr. President, I shall not vote to adopt legislation than can only intensify the energy crisis, legislation that can only be described as constituting a fraud on the consumer who would rather pay 2 or 3 cents more per gallon for assured supplies of gasoline than spend endless hours in line for a gallon or two at present prices. I urge the American public to hold accountable for future shortages those Members of Con-

gress who are responsible for so shortsighted an approach to meeting our greatest domestic needs, namely the need for substantial self-sufficiency in energy.

Mr. President, it is bad enough that the current legislation will compound the energy crisis by virtue of the price controls that have been introduced in conference. The bill, however, was already unacceptable as originally adopted by the Senate.

As the ACLU has pointed out, the act delegated to the Executive plenatry powers to intrdude into every sector of the economy, every facet of public and private affairs in a manner far beyond the needs of the emergency. Elementary safeguards were scrapped, and in area after area the Congress abdicated elementary responsibilities while passing the buck to the Executive.

Mr. President, I do not deny either the existence of an emergency or the need to assign necessary powers to cope with it. These powers, however, should be defined as narrowly as possible; and where it is possible to insist on appropriate hearings and review without needlessly handicapping the ability of the Executive to act, those safeguards should be insisted upon.

In my judgment, Mr. President, both the short and the long term needs of the American consumer will best be served if we admit that we have allowed the current bill to grow out of all control, and return to the drawing board. We could then reconstruct a taut, prudent assignment of responsibility that will not only delegate only those powers essential to the job of seeing that our shortages are equitably shared, but we can report out legislation that will allow our energy industry the freedom to go to work and develop the new resources that alone will liberate us from the current emergency.

I urge the American public to hold accountable for future shortages those Members of the Congress who are responsible for so shortsighted an approach to meeting our greatest domestic need, namely, the need for substantial self-sufficiency of energy.

Mr. GRAVEL. Mr. President, I yield myself 3 minutes.

Mr. President, I think it is obvious that if this body today could roll back prices, that is, roll back inflation, it would have done it a long time ago. We would have done away with inflation a number of years ago if we had the magic to do that.

Let me reiterate that we have four policy options to pursue.

One is incentives, which is what we have been doing. That has not been adequate.

The second is taxation. That is what, I think, the Senator from Washington was confusing with the free market. Taxation depresses the money available and gives the Government money. However, it does not add to the supply available.

The third is rationing. Rationing distributes a product but does nothing to solve the problem.

The last is to increase prices. The money then does not go into Government, but goes to increase the supplies and affords money with which to dig wells, and lay pipe and do other things.

There is no magic involved.

We can take our choice. The capital can come from the consumers. They will pay for the cost of the products. If that does not happen, and

we want to solve the problem, we can do what the Senator from Washington has suggested doing in Alaska. That is, we can have the Government drill for oil. Then we will have the people of this country pay for the cost of the refining and the pipe and the drilling. The person who pays is the taxpayer. The taxpayer and the consumer are the same person.

We can take our choice as to what system we want to employ to solve the problem.

Mr. DOLE. Mr. President, the Energy Emergency Act contains some of the basic authorities needed by the Government to deal with the problems of energy scarcity and fuel shortages in America. It would establish the Federal Energy Administration as a separate Government agency. It provides the basis for putting rationing into effect if necessary. It deals with allocations, unemployment assistance, environmental regulations and a number of other important features of our framework for dealing with energy-related questions.

The Energy Emergency Act passed the Senate on November 19, 1973. On December 17 it was approved by the House. Since then, a House-Senate conference report has come before the Senate in two different forms, and the bill has still not been sent to the President for signature.

Section 110

But the story of this bill is not only that it has failed to become law. The full story involves the attitudes and tactics of some Senators and Congressmen who—given the choice between the public interest and political opportunism—have repeatedly set their own narrow ambitions above the country's interest of having a sound national energy policy. And to understand this point we need look no further than section 110 of the bill.

Section 110 did not exist when the Energy Emergency Act passed the Senate in November. At that time the atmosphere in the Senate supported enactment of a basic, straightforward bill to provide needed statutory tools for handling the energy crisis. The vote of 78 to 6 is a good indication of the serious bipartisan attitude that prevailed then.

But when the bill went to the House, a successful effort was made to turn it into an emotional and empty play on the concerns held by many Americans over possible windfall profits to the energy industry as a result of the fuel crisis.

Let me say at the outset that I believe the concern over windfall profits is proper and legitimate. There is no reason, excuse or justification for any industry, business or corporation to get rich on the sacrifices and hardship the energy situation imposes on millions of Americans.

The public has a perfect right to expect that they will be protected from profiteering, price gouging, or any other unfairness. If sacrifices are called for, then equality and basic justice must be guaranteed. This is the American way, and in this sense the energy crisis is no different from World War II or any other great challenge to our abilities and resources.

As a member of the Senate Finance Committee, I have already spoken out in support of a technically sound and administratively effective means of taxing excess profits, with a plowback provision to

encourage greater efforts toward increasing energy supplies. Hearings have already begun, and I am confident that we will be able to write a bill which is effective in providing this necessary protection while contributing to the overall energy effort at the same time. Any such measure must be written so it assures more energy for America, not less.

But there is a difference between identifying a broad public concern and doing something responsible and effective to deal with it. And the case of congressional action on the windfall profits issue, so far, shows how great that gap can be.

With much publicity and pious rhetoric **section 110** was unveiled in the House as the great cure-all for this problem. Its supporters went on television to proclaim how it would protect the average citizen, hold the corporate giants in check and provide the answer to profiteering in the energy crisis.

Of course, this sounded good. How can anyone lose by being for the little guy and against the forces of corporate greed? But a look beneath the surface revealed an astounding example of pure political hokum. Instead of holding the promise of public protection, this provision actually hid a grave threat of wholesale economic disruption. **Section 110** was not a tax. It was not a means of providing more energy. It did not even go into effect until 1975. In fact, a panel of tax experts who appeared before the Senate Finance Committee could not tell us exactly what **section 110** was—other than a sure-fire prescription for disaster.

It was a prescription written by someone who either had no real idea of the problems we are facing—or did not really care about solving them.

The heart of **section 110** was the Renegotiation Board, an obscure Federal bureaucracy which has not done much of anything since being created in 1951. The Board was to hear complaints from citizens who felt they had been charged too much for "petroleum products." And if the Board agreed with the complaint and found that the price was too high, it could order a refund of the "windfall profit."

But what petroleum products were covered? What sales were included? What was a windfall profit? Who could bring a complaint?

Section 110 did not answer these questions. But the experts who appeared before the Finance Committee agreed that it would give anyone the right to file a complaint against any dealer, merchant or company that sold petroleum products. And this right extended all the way down from the major international oil company to the corner service station.

There have been some logjams in administration of many laws. The National Labor Relations Board fights a continuing backlog of labor-management cases. The Cost of Living Council and the Federal Trade Commission all are faced with weeks and months of docketed cases. But can you imagine the tidal wave of complaints that would have swept over the Renegotiation Board if it was told to decide whether every tankful of gasoline sold in America resulted in windfall profits to the seller or his company?

No one knows the answer to that question, and fortunately we will never find out. But a rough estimate can be gained from the fact that it now takes some 3½ years for the Renegotiation Board to decide one of its cases.

After looking at this provision it is not hard to understand that its impact on America would have been totally devastating. It would have brought every element of the petroleum industry to a grinding halt in a web of redtape. And the American people would have been left high and dry with no fuel and no real protection against unfair profits. This is not hard to see.

The point that is hard to understand is that any serious Member or Congress could have proposed such a scheme—or that it would have been sold to a majority of the House.

Fortunately, the Senate was able to recognize this hoax and the threat it represented, and by a 57-to-37 vote refused its approval.

Those of us in the majority on that vote were hopeful that any alternative to **section 110** would have to be an improvement. But we were mistaken.

When the bill reemerged from the conference committee, the windfall profits provision was gone. But it had been replaced by a so-called rollback on crude oil prices.

Of course, it sounds good to say "Let's roll back the price of the crude oil which makes all of our fuels, fertilizers, and other petroleum products so expensive." But before jumping on this bandwagon, it would be wise to look at the details and effects of such a plan.

In the first place more than five-sixths of the oil consumed in this country would not be affected by this rollback. A third of our oil comes from imports, and no act of Congress is going to change the prices charged by Canada, Venezuela, and the other exporting countries. Furthermore, two-thirds of the oil produced domestically in America is now under price controls at levels equal to or below the rollback level, so there would be no effect on this oil. Together, imports and old oil add up to more than 82 percent of our consumption from both foreign and domestic sources.

This leaves only one-sixth of all the oil in the United States to be covered by a rollback. And what oil is this? It is the so-called new oil which represents the new discoveries and increased dependence on costly imports. And it is the production of the small, marginal stripper wells. There are hundreds of thousands of these wells. And although they each produce less than 10 barrels per day, they supply some 12 percent of our total domestic production—an extremely critical margin in these days of embargoes and other uncertainties. In addition these stripper wells constitute more than 90 percent of all the oil wells in Kansas.

In consumer terms it is estimated that this rollback would mean less than a penny per gallon on all oil products—hardly a significant measure of relief and hardly worth the price of undermining our efforts to expand our domestic petroleum supplies.

So the congressional opportunists have struck again by promising a simplistic cure-all for the energy crisis. This rollback would affect very little of the oil produced by the major oil companies whose profits are such a great concern to many of the more prominent energy experts. It would make no difference at all on the prices of the growing volume of imports. But it would have a massive impact on the system of incentives that have been set up to expand the search for new oil within our borders. And it would probably mean a substantial reduc-

tion in the numbers and production of the thousands of small stripper wells in Kansas and elsewhere.

I do not believe $10 per barrel prices for oil in this country is some sort of a magic figure so far as adequacy of our domestic supplies is concerned. There is such a thing as a reasonable incentive, and beyond that there is unnecessary gravy. But a sizable difference exists between the incentives in a $5 barrel of oil and in oil priced in the neighborhood of the long-term equilibrium level for oil which is estimated to be somewhere in the $7 to $8 range.

Today's prices for new and stripper oil average $9.51. The rollback proposed in the energy bill would mean a 45-percent reduction in the price of this oil—and make it no different to the so-called old oil that involves no expense or risk to produce. This sort of approach simply does not make sense.

It would mean that all the incentive differential for new and stripper oil would be removed, and prices would be held below the expected long-term equilibrium level. Of course, the provision contains a discretionary feature allowing the President to raise oil prices by 35 percent.

But this is only an attempt to let Congress off the hook and put the monkey for high fuel costs on the President's back. Practical pressures would probably make it impossible for him to do this. So we would wind up being locked into a situation which would provide no real price relief to the public and would seriously undermine the effort to expand domestic energy supplies.

This rollback is not good sense on any count. It would mean nothing to the giants of the oil industry whose sales in this country are mostly of foreign oil—at from $10 to $20 per barrel—and old oil which is not affected at all by the rollback.

But it would have an immediate and crushing impact on the independent petroleum industry. These small operators account for 80 percent of the exploratory wells drilled in this country and they operate some 80 percent of the Nation's 350,000 stripper wells. The annual cost of the rollback to these independents would be an estimated $3 billion—much of which would go to further expand their domestic exploration and drilling operations.

Aside from these direct costs, the rollback would further cripple the independents by reducing their ability to attract outside financing for their operations. A 45-percent reduction in the price they could expect to receive for their product would seriously alter their attractiveness to any investor with money to place in possible profitmaking activities.

This two-pronged attack on the independent petroleum industry would only harm our Nation's energy posture—and deal a crippling blow to an industry that is vital to the economy of Kansas and which is crucial to the energy outlook for every American.

Mr. President, I do not wish to appear overly concerned with the impact of this proposal to Kansas. But it is difficult to observe these proposals and the statements of some Senators without becoming concerned for the welfare of my State—as well as the future of our entire Nation.

It is easy for someone from a State which produces no oil or gas to stand up in the Senate and say "roll back the price of oil." They can

say this and then go home and tell their constituents of heroic efforts to reduce the prices of gasoline and heating oil and other petroleum products. It is very easy to do this. And it is popular with the folks back home—that is, unless a major segment of your State's economy happens to be the business of finding and producing oil or the people in your State know the difference between irresponsible appeals for publicity and serious efforts to gain more energy for this country. And I assure my colleagues in the Senate that this difference is clearly understood in Kansas.

What is not so well understood by myself and by other Kansans is how much punishment is going to be inflicted on our State.

First, there is a major call for expanded reserves and production of domestic petroleum.

Second, the Kansas independent oil industry is whipsawed on the prices for its oil.

Next, there is talk that the oil produced in Kansas will be forced out of the State by allocation regulations, so the cars and homes in nonproducing States can be kept supplied.

Needless to say, the people of Kansas—and quite understandably—are beginning to wonder what is going on. They are beginning to wonder if some in the Senate are not embarked on a campaign to have it both ways on this energy issue. And I wonder myself sometimes.

If one State or region does not want to make a contribution to expanding energy supplies within its borders, that is its business. But I do not believe they should be heard to complain about the incentives offered for those elsewhere to explore for and develop new energy supplies.

The people of Kansas are aware of these attitudes, and I suspect that they are becoming rather tired of hearing people say, "We want you to produce more oil, but we want it all for ourselves and we want it at prices that we like."

The people of Kansas are generous. They do not want their fellow citizens to suffer unnecessary hardships. But the people of Kansas are not stupid, either. And they see little reason for their precious crude oil and natural gas being subject to punitive pricing regulations and then being forced out of the State to supply people who support policies which work against finding real solutions to our energy problems.

As an indication of the effect that higher crude oil prices have had on the Kansas independent oil and gas industry, I would cite the fact that the number of new wells drilled during January 1974 was up some 30 percent over January 1973.

This year, in spite of poor weather and extremely severe shortages of tubular steel goods, 206 new wells were drilled in January, compared to 151 in the same month of 1973.

In addition, the Hughes Tool Co.'s report on the monthly average number of rotary drilling rigs in Kansas shows an increase from 38.8 in January and 19.5 in March 1973 to 41 in January 1974.

Looked at another way, the Kansas impact of the rollback proposed in section 110 of the pending bill is estimated to be in the neighborhood of $85 million. And when divided by a rough average $40,000 cost of drilling a well, this translates into approximately 2,000 wells—wildcat and development—that would not be drilled in Kansas this year.

Many other less concrete examples of the new price structure's impact in Kansas are to be seen.

One Kansas independent reports that an out-of-State company is entering into partnership with him for the first time to undertake operations in Kansas. Others report new drilling rig purchases, new orders and new plans.

All agree that they would be able and willing to do much more if the steel shortages could be solved.

But overall, I do not believe there is any question that a new spirit and a greatly increased level of activity has resulted in the Kansas independent petroleum industry. Nor is there any doubt that **section 110's** rollback would be disastrous to this industry and to its efforts at expanding America's oil and gas supplies.

I certainly understand the concern of many Americans over the vastly increased prices they have been forced to pay for gasoline, propane, heating oil, and other petroleum products. To most people, these items are not luxuries but absolute essentials in their daily lives. For the elderly, the poor, and all those living on fixed or limited incomes, these price increases have been especially severe and burdensome. So I believe every effort must be made—in a responsible way—to restrain the increases in fuel costs.

As I have said, a wholesale rollback on new and stripper oil is not a responsible approach, because the measures of relief it would provide consumers would not be commensurate with the toll it would take on the independent petroleum industry and on the long-term need of America to expand its energy supplies. One of the fundamental tests that must be applied to any measure in this field—whether an excess profits tax, a price rollback, or any other approach—is whether it is compatible with our additional efforts to provide more energy for America. And in the case of the broad rollback proposed by **section 110,** the answer clearly is that it would work against these energy-expansion efforts.

But as I said earlier $10 per barrel is not a magic figure. And I do not believe that all the oil produced in America—or even a major portion of this oil—needs to sell at this price to assure success in our energy campaign. Therefore, I have voiced my support for a limited rollback on new crude oil prices as a means of showing the American consumer that the controllable price structure will not be allowed to run wild. But such a rollback, to reasonable levels which would maintain an adequate incentive for continued exploration and development, would also be an indication—particularly to the independent petroleum industry—that its economic future is not going to be jeopardized by unrealistic and shortsighted congressional action.

My detailed views on this matter were contained in a letter I sent to Mr. William Simon last week, and I ask unanimous consent that the text of the letter be printed in the Record at the conclusion of my remarks.

The Presiding Officer. Without objection, it is so ordered.

(See exhibit 1, p. 1010.)

SUPPORT FOR RECOMMITTAL

Mr. Dole. Mr. President, I do not believe the Energy Emergency Act with the present provisions of **section 110** is a constructive or responsible approach to America's energy problems.

I regret that the conference committee has twice failed to come to grips with these problems in a manner which would provide real solutions rather than publicity or partisan advantage.

I will vote to recommit the conference report in the hope and expectation that the conferees will at last arrive at a workable, fair and constructive means for dealing with America's energy needs.

This is an important piece of legislation, and there are strong pressures for its enactment at the earliest possible date. But the stakes in this energy area are too high for us to allow an unwise and harmful measure to become law.

We must have the best possible legislation and the most sound policies to support our efforts to establish America's energy independence. With continued work and sense of serious purpose by the House and Senate, the Energy Emergency Act can come much closer to meeting these necessarily high standards.

EXHIBIT 1

WASHINGTON, D.C.,
February 14, 1974.

Hon. WILLIAM E. SIMON,
Administrator, Federal Energy Administration, Washington, D.C.

DEAR MR. SIMON: I have noted reports that the Federal Energy Office is considering the implementation of a rollback on crude oil prices.

Since the intent of any such action is to provide relief to consumers from the burdensome rise of fuel prices, I would prefer to see a rollback on the end product itself included in your considerations. If this proves unworkable, however, I would support a crude oil rollback, provided it meets two conditions; (1) the rollback be limited to so-called "new and released" oil and not apply to the oil produced by the more than 350,000 stripped wells in America; and (2) such a rollback be reasonable so as to maintain an adequate incentive for increased discovery and production of new domestic petroleum supplies.

While protection for consumer interests may require the imposition of some limitations on new and released oil, it should be kept in mind that greatly expanded supplies of new oil will be necessary to meet America's energy needs from secure domestic sources. Therefore, the return on this oil should be greater than on the "old" oil which requires no risk or significant new expenditures to produce. Some current prices for new oil may exceed the requirements of an adequate incentive, and I should think that a price level in the range of long-term equilibrium price estimates would be appropriate.

In my opinion an uncontrolled free market price should be allowed for stripper oil. The wells currently producing this oil—some 12 percent of domestic output—can only be kept in operation through a price structure which fully justifies the costs of their upkeep and maintenance. But more important, the Senate Finance Committee was told yesterday that a strong price for stripper oil can lead to the reactivation of many abandoned wells and increased production from them of some 250,000 barrels per day. I believe the need to maintain existing stripper production and the hopeful prospect for expanding our domestic production from abandoned wells fully justifies a free market price for stripper oil. And I would urge that this oil, therefore, be exempted from any rollback.

I appreciate having your comments on the points I have raised, and urge that they be taken into consideration as you study petroleum price matters.

BOB DOLE, *U.S. Senate.*

Mr. STEVENS. Mr. President, as a member of the conference committee I intend to vote in support of the conference report. It is very important to note that all members of the Public Works Committee and all members of the Commerce Committee who have served on this conference committee have endorsed the report.

I think that many here have overlooked the main problem facing the country, public enemy No. 1 in this Nation. That is the problem

of inflation. If there is anything that anyone can do about it, I think we are the ones who ought to try to do something.

I have just returned from a trip around my State. I have traveled around Alaska for 4 weeks since the first of this year. I can tell the Senator that the price of oil in Alaska is $4.09, not $5.25.

Anyone who says it is necessary to have a further increase to bring in more production ought to explain to me why an industry that is investing more money in my State to recover oil is receiving, at the wellhead, a price of $4.09.

We heard from Mr. Fred Hartley before the committee. In his testimony he said that he now is producing 85 percent of his refining capacity. He has had to buy 15 percent of his refinery capacity in the open market. The State of California, asserting its royalty in kind provision, has offered oil at competitive sale with the posted price as the minimum bid allowable. Thus, Mr. Hartley is now paying more money for that oil than the posted price for that area. So, the sale of royalty oil in California results in inflation in the price to consumers.

If we let pricing of oil go up and up and up without justification and, we really need a higher market price to bring in more oil, I do not know why we are building the Alaskan pipeline. We are doing it to bring vast quantities of oil to this country. We will in the equivalent of almost 50 million gallons of gasoline a day when we start this pipeline—2 million barrels per day at peak capacity.

I do not think that this is a temporary solution. It is a permanent one. If we had not been delayed in building that pipeline, we would not have this oil crisis in our country today. And there would not be any necessity for legislation of this type—we would have no shortages.

In Alaska, we have a price of $4.09. The price of stripper well oil is now $10.40 a barrel. But Alaskans are not getting any more for our oil today than we were a year ago. Something is wrong when this happens.

I am from an oil State. However, I believe in the national interest, we have to think about inflation. And if someone does not think about it, the people of this country will suffer. We are losing their support in the Congress because we vacillate back and forth.

I hope that the Senate will support the conference report.

Mr. JAVITS. Mr. President, I had not intended to speak in this debate today. However, I feel in fairness to my colleague from the State of New York that I should point out the reason why I will vote in support of the conference report.

I will do so for two reasons. One reason is that we need finality. We will never know what will happen here unless this measure goes to the President. Even if he vetoes it and it comes back, something worse will happen, because I consider this worse than the last one.

Mr. President, this is a bill I believe cannot be put off any longer. Certainly the conference report contains some troubling provisions but the need for mandatory conservation and rationing authority is so critical that the country cannot be asked to await new legislation and the hazards in its way dealing with these measures.

The conference report has one grave deficiency. The Congress has neither the capability nor the expertise to set prices for crude oil and the conference report does just that—and without the benefit of detailed industry and administration testimony on what price is necessary and what will produce most oil exploration.

Legislation can prevent a runaway price on crude oil from gouging hard pressed consumers and businesses. But that price cannot be rolled back so far that the incentives for increased domestic exploration and production of crude oil are eliminated. And, the rollback in **section** 110, may even put a damper on the increased exploratory activities already being conducted—mostly by independents and wildcatters.

But there must be a limit to how far we are willing to let the price of oil rise to encourage new production. For, at some point in that price progression the benefits are outweighed by the disadvantages. I am convinced that $7.09, although criticized by industry and administration representatives, is momentarily high enough to provide considerable incentive for new exploration and production.

The administration has suggested that a more attractive price level would be $7.88. Surely, some marginal oil producers will make a greater investment for $7.88 per barrel than for $7.09. But those figures are not really that far apart. If, in fact $7.09 is found to have a limiting effect on new exploration I feel that the Congress will act, via tax legislation to provide special incentives for new domestic production, or through new price control legislation, to insure that producers are given enough incentives to continue their active search for new oil within our borders. American self-sufficiency in oil is a goal we all share and we in the Congress will not forget that our efforts toward that goal are paramount.

I have witnessed the problems that New York residents are experiencing in obtaining the limited supplies of gasoline available. I am convinced that unless some breakthrough is achieved with the oil-producing nations rationing is the only fair alternative to these intolerable burdens. Hence, we need the authority contained in this conference report to provide that necessary alternative. The American people already have waited too long for the Congress to deliver on its promises for that authority and the other mandatory conservation measures included in this report. They are entitled to some measure of finality by the Government. This report contains that finality—which is already long overdue and cannot be shelved for another round of political compromise.

It is for these reasons that I feel justified in supporting the conference report.

Finally, Mr. President, our present problem is inflation. The problem these gentlemen speak of, of discovering more oil, is a very real one, but it is much longer range than the immediate grave danger of inflation and equality of supply. Because I think this bill seeks to strike a blow affirmatively in those two respects, I shall vote for the conference report.

Mr. GRAVEL. Will the Senator tell me where in this bill there is a provision for the ability to increase supply?

Mr. JAVITS. I did not say that. The Senator did not listen to me. I said this deals with inflation and the fairness of distribution.

Mr. GRAVEL. I just wish to make one point. We are not dealing with finality, or with a short-term emergency crisis. We have an immediate prospect of at least a 5-year crisis of the proportions we have today. The only way to solve it, today or next year or in 5 years, is by increasing the supply. You can only increase the supply by increasing the cost. It will cost money to bring that supply to the market.

Mr. HANSEN. Mr. President, I think it is important that the people of the United States understand a few facts.

This Nation is very dependent upon oil and gas, because nearly 80 percent of our energy comes from those two sources. This bill will not do one thing to make more oil and gas available in the United States. On the contrary, it will make less available, because in my office we have received over 300 letters and wires, to say nothing about 50 phone calls, from people actually in the business, people who are operating stripper wells, people who know that more oil can be gotten out of the ground if we are willing to pay the price for it, but it is not going to be gotten out of the ground if we roll the price back to a point that is only half of what it is now.

Let us remember this, if we are concerned about jobs. Obviously the Senator from Washington (Mr. Jackson) is, because he has a provision in this bill for the Federal Government to pick up the unemployment checks in States around the country where unemployment results from the energy crisis, and he certainly should have it because if we pass this bill, we will have that kind of an energy crisis.

The reason we are having unemployment right now is that we did not have enough oil and gas. Let us do more about that problem, and not cut back on these efforts that we have made to augment our production, in order that oil and gas can be available.

Mr. President, if we are concerned about unemployment, let us remember there is no better way to bring it about in this country than to put people out of work. You can talk about inflation, but there is one thing worse than inflation, and that is to have people out of jobs.

I say to my friends on both sides of the aisle that it is important that we do not pass this bill. Secretary Simon has said that with the provisions that are in it, the President will be forced to veto it, and he is going to be forced to do that if we do not change it for very good reasons. He is concerned about Americans. He is concerned about our self-sufficiency. He is concerned about the fact that right now we are tools in the hands of the Arabs.

If we want to get back our independence, let us do something about our reserves here, so as not to become further dependent upon the Arab States.

Mr. JACKSON. Mr. President, I shall be very brief. I have 3 minutes.

The Senator from Wyoming has clearly and concisely stated the situation when he said that there is something worse than inflation, and that is people out of work.

Mr. President, I think it is very clear throughout the Nation that we have both. We have the most damnable inflation this country has experienced in 27 years. We have already a quarter of a million people out of work directly due to the energy crisis.

Mr. President, it is obvious that without restraint we can destroy the economic fabric in this Nation. It is happening in Europe, but it does not need to happen in the United States of America. There is no reason why we should adopt the cartel price of the Middle East.

That is the issue before the Senate.

Mr. ABOUREZK. Mr. President, the only thing I want to say is that I shall vote against this conference report with the so-called price rollback **[Sec. 110]**, because it is not a price rollback, it is a price

increase provision being sold as a price rollback. What it will do is allow the President, at his discretion, to raise crude oil prices to $7.09 a barrel, and if anyone would like to make book on when he will do that, I think he will find a lot of takers that he will.

So I shall vote against it, and I urge other Senators to do so, because if we do not get a real rollback instead of this so-called rollback, a lot of people are going to be knocking down the pillars of this Capitol demanding to know why.

Mr. FANNIN. Mr. President, let us look at the remarks of the man who would have jurisdiction to administer the proposed legislation. Mr. William Simon:

> The provision which would "roll back" the price of all crude oil to an artificially established price creates economic uncertainty . . . would have the effect of discouraging production of domestic crude oil at a time when the Administration's policy and the Nation's need is to increase supply.

Here is his comment about the unemployment compensation provision **[Sec. 116]**:

> An unworkable employment assistance provision is also included in the conference report.

Then he says:

> The legislation before the Senate contains authority for HUD and SBA to make low interest loans to homeowners and small businesses to finance insulation, storm windows and heating units. If every eligible homeowner and small businessman took advantage of this section, the government could spend as much as $75 billion on this provision alone. The actual energy savings produced by these vast expenditures would be disproportionately small.
>
> These are just a few of many objectionable features of S. 2589.

I ask unanimous consent that the entire letter of February 19, 1974, from Mr. Simon to the minority leader, Honorable Hugh Scott, be printed in the Record at this point.

There being no objection, the letter was ordered to be printed in the Record, as follows:

THE DEPUTY SECRETARY OF THE TREASURY,
Washington, D.C., February 19, 1974.

Hon. HUGH SCOTT,
U.S. Senate, Washington, D.C.

DEAR HUGH: The Energy Emergency Conference Report (S. 2589) before the Senate today contains so many objectionable provisions that the President will have no choice but to veto the bill should it reach his desk in its current form.

We do believe that additional statutory authority is needed in the energy area, and the Energy Act does address several of these areas. We do need the authority to mandate conservation measures. We do want direct authority to institute end use rationing. We do want authority to require conversion of powerplants, so that greater use may be made of coal. Finally, we do support changes in the environmental area which the Act also addresses. Nevertheless, in total, the legislation goes far beyond these areas and has so many unworkable provisions and unwarranted controls that it would exacerbate the fuel shortage rather than relieve it.

For example, the provision which would "roll back" the price of all crude oil to an artificially established price creates economic uncertainty and would have the effect of discouraging production of domestic crude oil at a time when the Administration's policy and the Nation's need is to increase supply. We need flexibility in setting prices so that we may be sure that prices will be reasonable to the consumer and yet will stimulate needed investment and increase domestic production. Our experience in administering the crude allocation program has shown how difficult it can be if enough flexibility is not provided by statute. We asked Congress not to require the allocation of crude oil at all levels, but the current law does so and makes administering such a program most difficult.

We must work together to build a strong domestic energy industry so that our country will not be so dependent on foreign sources of crude oil. At the same time, we are concerned that the industry does not profit excessively at the expense of the consumer. I feel the President's "windfall profits" proposal will assure that no one will take advantage of the shortage by unreasonable profits.

Another unworkable portion of the Act is the creation of the Federal Energy Emergency Administration. It contains virtually no administrative authorities, no viable executive structure and no provision for continuity with existing activities under the Federal Energy Office. We prefer enactment of a measure more along the lines of the Energy organization already passed by the Senate and now on the House calendar. We must have the right kind of agency to do the proper job.

An unworkable employment assistance provision is also included in the Conference Report. The states would determine eligibility using vague open-ended guidelines that would make it very difficult to define unemployment due to "the energy crisis." We support the President's unemployment compensation proposals pending before Congress which are workable and reasonable.

The legislation before the Senate contains authority for HUD and SBA to make low interest loans to homeowners and small businesses to finance insulation, storm windows and heating units. If every eligible homeowner and small businessman took advantage of this section, the government could spend as much as $75 billion on this provision alone. The actual energy savings produced by these vast expenditures would be disproportionately small.

These are just a few of many objectionable features of S. 2589. It unfortunately contains very few needed authorities and imposes costly requirements that hinder rather than help deal effectively with the energy shortage. There are some provisions in this bill, such as the requirement for increased reporting of energy data, which are important. However, every one of these provisions is addressed in separate and more reasonable legislation already in the Congressional process.

I know most Senators are eager to be helpful in solving fuel problems, but the Conference Report now before the Senate will have the opposite effect. The President, after careful consideration, has decided that the only reasonable course is for him to veto S. 2589.

With warm personal regards,

Sincerely,

WILLIAM E. SIMON.

Mr. FANNIN. Mr. President, I have also another letter from Mr. Simon which provides the answer as to the effects of **section 110** on the price of propane. I ask unanimous consent that the entire letter be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

FEDERAL ENERGY OFFICE,
Washington, D.C.

Hon. PAUL FANNIN,
U.S. Senate,
Washington, D.C.

DEAR PAUL: Thank you for your inquiry regarding recent FEO actions pertaining to propane prices. I understand many of your colleagues from States which are heavy propane users have been justifiably concerned about the price increases of propane that have taken place over the last several months.

On January 30, 1974, the FEO issued a special propane price rule which limited the amount of costs which refiners can pass through on a dollar-for-dollar basis to propane. Refiners are allowed to increase the price of propane after February 1, 1974, only in direct proportion to the percentage that propane sales represent to total sales over the coming year. The amount this will reduce propane prices will depend on the sales volume of the product and the amount of costs the refiner incurs. Based on current costs and sales volume of a typical company the company's price for propane should be reduced to approximately 15 cents per gallon at the refiner gate and its retail price drop to approximately 30 cents per gallon. This would be a savings of 25% or more for propane consumers.

Because of the urgency of the matter to consumers, on February 14 the FEO conducted a meeting attended by major propane producers at which FEO staff

stressed the need for the immediate reduction in propane prices. It was made clear to those attending that FEO was ready to take additional steps if the industry did not voluntarily reduce prices.

Additionally, the attendees were advised that we are conducting an intensive investigation into speculator type transactions and that we would be reviewing purchase records to identify the participants and the source of purchased propane.

The results of our special pricing rule and the meeting with the 26 top refineries are already appearing. Cities Service cut prices 4½¢ a gallon, Shell Oil, 4¢ a gallon, Phillips cut propane prices 8½¢ a gallon and is considering an additional decrease this week. Gulf has made a 4.75¢ a gallon decrease and Getty Oil cut prices 2.2¢ a gallon above that which is called for by the regulations. Sun Oil is announcing a decrease tomorrow. Exxon will announce a decrease on March 1st. Skelly Oil has remained at the 10¢ or 11¢ level throughout the program because of the lack of increased costs. Ashland Oil, Atlantic Richfield and Standard of California have informed us they will decrease prices. Other companies have indicated their willingness to make price cuts but have not yet made the calculations on which to base decreases.

Section 110 of the Conference Report on the Emergency Energy Act (S. 2589) which calls for a rollback of crude prices to $5.25 per barrel with a ceiling of $7.09 per barrel would have little impact if any in further reducing the price of propane. We feel that the action we have already taken should be sufficient to protect American consumers who are dependent upon propane. Accordingly, I would hope that you and your colleagues would vote to recommit the Conference Report on the Energy Emergency Act in as much as there is little in it that could further rectify the matter of propane prices.

Sincerely,

WILLIAM SIMON.

Mr. FANNIN. He said that this legislation would be far less effective than many here this afternoon would have us believe. He added:

Accordingly, I would hope that you and your colleagues would vote to recommit the Conference Report on the Energy Emergency Act in as much as there is little in it that could further rectify the matter of propane prices.

So, Mr. President, I move to recommit the conference report on S. 2589 to the conference.

The VICE PRESIDENT. The Senator from Arizona (Mr. Fannin) has made a motion to recommit the conference report to the conference committee.

Mr. JACKSON. Mr. President, I ask for the yeas and nays on the motion to recommit.

The yeas and nays were ordered.

Mr. ABOUREZK. Mr. President, I have an amendment by way of a substitute for that motion. I move to recommit the conference report S. 2589 with instructions to eliminate section 110 of the conference report, and I ask for the yeas and nays.

Mr. BUCKLEY. Mr. President, I offer an amendment to the amendment just offered by the Senator from South Dakota (Mr. Abourezk).

The VICE PRESIDENT. The amendment to the amendment offered by the Senator from South Dakota will be stated.

The assistant legislative clerk read as follows:

Strike the instructions in Abourezk motion and insert instead: "with instructions to strengthen section 110, regarding the prohibition of inequitable prices; by revising section 110 to protect the American consumer of petroleum products by providing for an administrative procedure for the adjustment of domestic oil prices to maximize incentives for the exploration and production of increased U.S. petroleum supplies and to avoid the likelihood of increasing U.S. dependence upon high cost and unstable Arab oil; and to make other necessary revisions consistent with the above stated objectives."

Mr. ABOUREZK. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from South Dakota will state it.

Mr. ABOUREZK. The motion offered was made by way of a substitute. Is it in order to offer an amendment to that substitute?

The VICE PRESIDENT. The Senator's amendment is in order.

Mr. JACKSON. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. GRAVEL. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from Alaska will state it.

Mr. GRAVEL. What are we voting on?

Mr. MCCLELLAN. Mr. President, let the question be stated.

The VICE PRESIDENT. The Chair will state that the Senate is voting on the amendment of the Senator from New York (Mr. Buckley) to the substitute of the Senator from South Dakota (Mr. Abourezk).

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may propound a unanimous-consent request.

Several Senators addressed the Chair.

The VICE PRESIDENT. The Senate will please be in order.

Mr. MANSFIELD. Mr. President, I ask unanimous consent, as long as there are going to be a number of rollcall votes back to back, that the first one take up the usual 15 minutes and that the following rollcall votes take up 10 minutes.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

Several Senators addressed the Chair.

Mr. GRAVEL. Mr. President, there is still confusion as to what we are voting on. Would the Chair state the issue—the Senator from New York's, the Senator from South Dakota's, and then the prime issue, so that we will know in what sequence the votes will occur?

The VICE PRESIDENT. In response to the request of the Senator from Alaska, the Chair would ask the clerk to read the substitute and then to read thereafter the amendment to the substitute as offered by the Senator from New York State (Mr. Buckley).

Mr. GRAVEL. Mr. President, the first vote will occur on what?

The VICE PRESIDENT. The vote on the amendment to the substitute will come first.

The clerk will state the substitute to the motion to recommit and subsequently report the amendment to the substitute as offered by the Senator from New York.

The assistant legislative clerk read as follows:

Strike the instructions in Abourezk motion and insert instead: "with instructions to strengthen section 110, regarding the prohibition of inequitable prices; by revising section 110 to protect the American consumer of petroleum products by providing for an administrative procedure for the adjustment of domestic crude oil prices to maximize incentives for the exploration and production of increased U.S. petroleum supplies and to avoid the likelihood of increasing U.S. dependence upon high cost and unstable Arab oil; and to make other necessary revisions consistent with the above stated objectives."

The VICE PRESIDENT. Will the Senate please be in order? The occupants of the galleries are reminded that they are guests of the Senate and must remain quiet.

Mr. JACKSON. Mr. President, a parliamentary inquiry?

The VICE PRESIDENT. The Senator from Washington will state it.

Mr. JACKSON. If the amendment of the Senator from New York is approved or disapproved, will not the vote then occur on the substitute motion of the Senator from South Dakota?

The VICE PRESIDENT. The Senator from Washington is correct. Whether the substitute is amended or not amended, the next vote will come on the substitute to the motion to recommit.

Mr. JACKSON. Mr. President, a further parliamentary inquiry.

The VICE PRESIDENT. The Senator from Washington will state it.

Mr. JACKSON. Do I correctly understand that the yeas and nays have been ordered on all three—that is, the amendment to the substitute, the substitute, and then with regard to the motion to recommit?

The VICE PRESIDENT. The Senator from Washington is correct.

Mr. ABOUREZK. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from South Dakota will state it.

Mr. ABOUREZK. Is it a violation of Senate rules to provide instructions or to require instructions to a conference report on any point not in any original—any of the original bills in either the House or the Senate?

The VICE PRESIDENT. The matter must be related to what is in the conference report, or in either the House or Senate versions as passed by either body.

Mr. ABOUREZK. Then, Mr. President, I made the point of order against the amendment of the Senator from New York (Mr. Buckley), on the ground that the subject of his amendment is not contained in either House or Senate bill and therefore is beyond the scope——

Mr. BUCKLEY. Mr. President—Mr. President——

The VICE PRESIDENT. The Senator from New York is recognized.

Mr. BUCKLEY. I would point out that my substitute is as relevant to section 110 as section 110 is to anything which appears in the legislation as passed by the House or Senate.

The VICE PRESIDENT. The Chair, after reviewing the substitute and the amendment to the substitute, rules that the substitute is in order.

The question is on agreeing to the amendment of the Senator from New York (Mr. Buckley) to the substitute of the Senator from South Dakota (Mr. Abourezk).

The assistant legislative clerk called the roll.

Mr. GRIFFIN. I announce that the Senator from Texas (Mr. Tower) is absent on official business.

I further announce that, if present and voting, the Senator from Texas (Mr. Tower) would vote "yea."

The result was announced—yeas 37, nays 62, as follows:

[No. 35 Leg.]

YEAS—37

Aiken	Domenici	Johnston
Baker	Dominick	Long
Bartlett	Eastland	McClure
Beall	Fannin	Montoya
Bellmon	Fong	Pearson
Bennett	Goldwater	Percy
Bentsen	Gravel	Roth
Brock	Griffin	Scott, Hugh
Buckley	Gurney	Scott, William L.
Cook	Hansen	Stennis
Cotton	Helms	Taft
Curtis	Hruska	Thurmond
Dole		

NAYS—62

Abourezk	Hatfield	Muskie
Allen	Hathaway	Nelson
Bayh	Hollings	Nunn
Bible	Huddleston	Packwood
Biden	Hughes	Pastore
Brooke	Humphrey	Pell
Burdick	Inouye	Proxmire
Byrd, Harry F., Jr.	Jackson	Randolph
Byrd, Robert C.	Javits	Ribicoff
Cannon	Kennedy	Schweiker
Case	Magnuson	Sparkman
Chiles	Mansfield	Stafford
Church	Mathias	Stevens
Clark	McClellan	Stevenson
Cranston	McGee	Symington
Eagleton	McGovern	Talmadge
Ervin	McIntyre	Tunney
Fulbright	Metcalf	Weicker
Hart	Metzenbaum	Williams
Hartke	Mondale	Young
Haskell	Moss	

NOT VOTING—1

Tower

So Mr. Buckley's amendment to Mr. Abourezk's substitute was rejected.

The Vice President. The question recurs on the substitute offered by the Senator from South Dakota. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. Griffin. I announce that the Senator from Texas (Mr. Tower) is absent on official business.

I further announce that, if present and voting, the Senator from Texas (Mr. Tower) would vote "yea."

The result was announced—yeas 37, nays 62, as follows:

[No. 36 Leg.]

YEAS—37

Abourezk	Domenici	McClure
Aiken	Dominick	McGee
Bartlett	Eastland	Montoya
Beall	Fannin	Pearson
Bellmon	Fong	Percy
Bennett	Goldwater	Roth
Bentsen	Gravel	Scott, Hugh
Brock	Gurney	Scott, William L.
Buckley	Hansen	Stennis
Cook	Helms	Taft
Cotton	Hruska	Thurmond
Curtis	Johnston	
Dole	Long	

NAYS—62

Allen	Haskell	Muskie
Baker	Hatfield	Nelson
Bayh	Hathaway	Nunn
Bible	Hollings	Packwood
Biden	Huddleston	Pastore
Brooke	Hughes	Pell
Burdick	Humphrey	Proxmire
Byrd, Harry F., Jr.	Inouye	Randolph
Byrd, Robert C.	Jackson	Ribicoff
Cannon	Javits	Schweiker
Case	Kennedy	Sparkman
Chiles	Magnuson	Stafford
Church	Mansfield	Stevens
Clark	Mathias	Stevenson
Cranston	McClellan	Symington
Eagleton	McGovern	Talmadge
Ervin	McIntyre	Tunney
Fulbright	Metcalf	Weicker
Griffin	Metzenbaum	Williams
Hart	Mondale	Young
Hartke	Moss	

NOT VOTING—1

Tower

So the substitute motion offered by the Senator from South Dakota (Mr. Abourezk) was rejected.

The VICE PRESIDENT. The question recurs on the motion to recommit offered by the Senator from Arizona (Mr. Fannin). The yeas and nays have been ordered. The clerk will call the roll.

Mr. FANNIN. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from Arizona will state it.

Mr. FANNIN. That is a motion to recommit the conference report without instructions. Is that correct?

The VICE PRESIDENT. The Senator from Arizona is correct. It is a motion to recommit the conference report without instructions.

Mr. FANNIN. I thank the Chair.

The VICE PRESIDENT. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SPARKMAN. Mr. President, on this vote I have a live pair with the Senator from Texas (Mr. Tower). If he were present and voting he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withhold my vote.

Mr. GRIFFIN. I announce that the Senator from Texas (Mr. Tower) is absent on official business.

The pair of the Senator from Texas (Mr. Tower) was previously announced.

The result was announced—yeas 38, nays 60, as follows:

[No. 37 Leg.]

YEAS—38

Abourezk	Domenici	McClure
Aiken	Dominick	McGee
Bartlett	Eastland	Montoya
Beall	Fannin	Pearson
Bellmon	Fong	Percy
Bennett	Goldwater	Roth
Bentsen	Gravel	Scott, Hugh
Brock	Gurney	Scott, William L.
Buckley	Hansen	Stennis
Byrd, Harry F., Jr.	Helms	Taft
Cotton	Hruska	Thurmond
Curtis	Johnston	Weicker
Dole	Long	

NAYS—60

Allen	Hartke	Mondale
Baker	Haskell	Moss
Bayh	Hatfield	Muskie
Bible	Hathaway	Nelson
Biden	Hollings	Nunn
Brooke	Huddleston	Packwood
Burdick	Hughes	Pastore
Byrd, Robert C.	Humphrey	Pell
Cannon	Inouye	Proxmire
Case	Jackson	Randolph
Chiles	Javits	Ribicoff
Church	Kennedy	Schweiker
Clark	Magnuson	Stafford
Cook	Mansfield	Stevens
Cranston	Mathias	Stevenson
Eagleton	McClellan	Symington
Ervin	McGovern	Talmadge
Fulbright	McIntyre	Tunney
Griffin	Metcalf	Williams
Hart	Metzenbaum	Young

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Sparkman, against

NOT VOTING—1

Tower

So the motion to recommit was rejected.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the motion to recommit was rejected.

Mr. RANDOLPH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JACKSON. Mr. President, I ask for the yeas and nays on final passage.

The VICE PRESIDENT. Is there a sufficient second [putting the question]? There is a sufficient second. The yeas and nays are ordered.

The question is on agreeing to the conference report. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. GRIFFIN. I announce that the Senator from Texas (Mr. Tower) is absent on official business.

I further announce that, if present and voting, the Senator from Texas (Mr. Tower) would vote "nay."

The result was announced—yeas 67, nays 32, as follows:

[No. 38 Leg.]

YEAS—67

Aiken	Haskell	Nelson
Allen	Hathaway	Nunn
Baker	Hollings	Packwood
Bayh	Huddleston	Pastore
Bible	Hughes	Pearson
Biden	Humphrey	Pell
Brooke	Inouye	Proxmire
Burdick	Jackson	Randolph
Byrd, Harry F., Jr.	Javits	Ribicoff
Byrd, Robert C.	Johnston	Schweiker
Cannon	Kennedy	Scott, Hugh
Case	Long	Sparkman
Chiles	Magnuson	Stafford
Church	Mansfield	Stevens
Clark	Mathias	Stevenson
Cook	McClellan	Symington
Cranston	McGovern	Talmadge
Eagleton	McIntyre	Tunney
Ervin	Metcalf	Weicker
Fulbright	Metzenbaum	Williams
Griffin	Mondale	Young
Hart	Moss	
Hartke	Muskie	

NAYS—32

Abourezk	Domenici	Hruska
Bartlett	Dominick	McClure
Beall	Eastland	McGee
Bellmon	Fannin	Montoya
Bennett	Fong	Percy
Bentsen	Goldwater	Roth
Brock	Gravel	Scott, William L.
Buckley	Gurney	Stennis
Cotton	Hansen	Taft
Curtis	Hatfield	Thurmond
Dole	Helms	

NOT VOTING—1

Tower

So the conference report was agreed to.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. RANDOLPH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HOUSE DEBATE AND PASSAGE OF SECOND CONFERENCE REPORT, FEBRUARY 27, 1974

Providing for Consideration of Conference Report on S. 2589, Energy Emergency Act

Mr. Pepper. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 901 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. Res. 901

Resolved, That immediately upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes, and all points of order against said conference report except against sections 105 and 110 thereof for failure to comply with the provisions of clause 3, rule XXVIII are hereby waived. Debate one said conference report shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce. At the conclusion of the debate, it shall be in order, on the demand of any Member, for a separate vote to be had on a motion to strike out section 104 of the conference report. At the conclusion of any separate vote demanded under this procedure, and if section 104 has not been stricken out by such separate vote, the previous question shall be considered as ordered on agreeing to the conference report.

The Speaker. The gentleman from Florida (Mr. Pepper) is recognized for 1 hour.

Mr. Pepper. Mr. Speaker, House Resolution 901 provides for a rule with 2 hours of general debate on the conference report S. 2589, the Emergency Energy Act.

House Resolution 901 provides that all points of order against the conference report are waived except against **sections 105 and 110** for failure to comply with the provisions of clause 3, rule XXVIII of the Rules of the House of Representatives—pertaining to amendments accepted by the conferees which are beyond the scope of the House and Senate bills.

House Resolution 901 also provides that at the conclusion of the debate on the conference report, it shall be in order, on the demand of any Member, for a separate vote to be had on a motion to strike **section 104** of the conference report.

S. 2589 creates a Federal Energy Emergency Administration to carry out authorities under this act and the Emergency Petroleum Allocation Act of 1973. The conference report also gives standby rationing authority to the President. S. 2589 also provides that the Administrator of the new Federal Energy Emergency Administration is authorized to issue regulations restricting public and private consumption of energy. All such regulations are subject to a congressional veto.

Mr. Speaker, I urge adoption of House Resolution 901 in order that we may discuss and debate S. 2589.

Mr. STAGGERS. Mr. Speaker, I take the floor to urge the defeat of the previous question on this rule. As I am sure my colleagues are aware, the rule would permit a single Member of this House to assert a point of order against two sections of the bill—**section 105** dealing with energy conservation plans and **section 110**, the so-called price rollback provision. In so doing the Rules Committee has provided an opportunity for a single opponent of this legislation to defeat it. Such a result most certainly would not be in the public interest.

I do not have to tell you that this has been a long and difficult legislative effort. In conference many compromises have been made. Your conferees have looked hard to find a middle ground and means of doing things which would overcome the objections of either House.

I know that the conference agreement remains controversial. I would expect legislation this important and complex to be so. But I urge that we permit the conference agreement to stand the test of a vote by the 435 Members of this House.

If the previous question is defeated, I will offer an amendment to the rule in the nature of a substitute which waives points of order on the entirety of the conference agreement, but permits separate votes on its most controversial sections. Accordingly, Members would have an opportunity to specifically express their assent or dissent to **sections 104 105, and 110** of the bill. If the House defeats the conference agreement then so be it. But at least let us give the House the chance to vote on it. Accordingly, I respectfully ask you to defeat the previous question on this rule.

Mr. FLYNT. Mr. Speaker, ordinarily on a rule of this kind I would be inclined to vote for the previous question. However, today I will vote against the previous question. I will do so because I think this House has a right to vote on whether or not we want an emergency energy bill.

If the previous question is sustained, there will be no vote on any item in this bill, because the entire report would be rejected on a point of order.

In addition to the Members of this House, Mr. Speaker, deserving the opportunity and the right to vote on this bill, the people of my district and the people of your district and the people of the United States of America have the right to know whether the House of Representatives is serious about combating this energy crisis or whether we are going to let it roll on and on and on and let the lines at the gasoline stations get longer every day that passes.

Ordinarily on procedural issues I am a purist because I believe in the orderly processes and procedures and rules of the House of Representatives, but today I rise in violent opposition to this rule, which would deny the House and each Member of this House the right to vote on possibly the most critical issue to face this Congress and this Nation during 1974.

Mr. Speaker, I urge a no vote on the previous question on the resolution in order that the House of Representatives will have an opportunity to work its will on the conference report.

If the majority of the House sees fit on a separate vote to reject any one of the three controversial sections in the conference report, the

conference report as a whole will fail. If a majority sees fit to reject any one section, it has that right, but by the same rule of fairness each of us—each Member of the House—has the right to vote yes or no on each of these provisions.

As I see it, the issue is clear-cut and squarely put: Are we going to permit this conference report to go down the drain by the objection of a single Member on a point of order, or are we going to accept or reject each one of these controversial sections on a recorded yea and nay vote on the merits of each one?

I believe the people in my district would want this conference report accepted or rejected on its merits rather than to let it die in a parliamentary morass.

There are some sections of this bill with which I do not agree and naturally there are some sections which I would like to change or modify, but I believe that the circumstances which exist at this time require action as opposed to nonaction.

I hope that each of these sections will stand and that the conference report will be adopted. I believe that the many advantages so heavily outweigh its disadvantages that we should put aside our reservations about an individual section or sections and pass something that may bring order out of the chaos that many sections of the country are experiencing today.

Mr. Speaker, let me make my position as clear as the English language can make it: I shall vote against the previous question; I shall vote for the Staggers substitute rule; on a separate recorded rollcall vote I shall vote for each of the three controversial sections; I shall vote for adoption of the conference report.

Mr. MAHON. Mr. Speaker, I rise in support of the rule, and in support of the previous question. We have had enough uncertainty already in the fuel situation, and in my view if we want fuel, if we want the people who can produce the fuel to get moving, we have got to give stability to the effort and the people have got to know what they can expect from the Government.

The rollback of crude oil prices as proposed can only have one result. It will slow down exploration and production of oil and gas. What the present energy crisis demands is the stimulation of production. The pending bill moves in the opposite direction. It will slow down and discourage the production of oil and gas. It will deprive the American people of much-needed fuel which can be made available.

I urge Members to vote for the previous question, vote for the rule, and against the bill on final passage.

Mr. ADAMS. Mr. Speaker, because of the desperate situation in our country today, with exorbitant fuel prices and long lines of cars at the gas pump, I am going to vote down the previous question on this rule in spite of reservations I have about the conference report. Then I shall vote for the Stagger's substitute rule.

Our people are in desperate need of a direct system which assures them a definite supply of fuel, such as a priority rationing system. This conference report repeats the existing discretionary authority on rationing. **[Sec. 104.]** It is my belief that under the Defense Production Act and the Emergency Petroleum Allocation Act, the President has had adequate authority to ration if he were so inclined, but again this decision has been avoided for too long and much public goodwill has

been wasted. Rationing at the first signs of the shortage for a limited period would have prevented the present chaos and given a base on which to build a voluntary allocation system.

The conference report also includes a badly needed price rollback provision. **[Sec. 110.]** Although I would like to see and will work for a rollback to $4.25 a barrel and strict cost justification for any increases above that amount, the rollback in this bill is a step in the right direction and will provide some relief for the consumer.

Equally as important is **section 124**, requiring the oil companies to disclose certain vital information. Once again this section should be much more comprehensive, but it is an improvement. As it now stands the only shortage we can be certain about, is a shortage of information.

In spite of these reservations, I will support the conference report because of other valuable sections I do support such as: providing for the protection of franchised dealers **[Sec. 111]**, establishing the Federal Energy Emergency Administration **[Sec. 103]**, restricting exports and equitable sharing of shortages among classes of users. **[Sec. 115.]** These are emergency matters that need to be dealt with on an emergency basis in this bill.

However, many sections in this conference report are both dangerous and unnecessary. I am fearful that our hasty action in these areas will result in little additional energy and may do great harm to our people. **Section 105**, "Energy Conservation Plans," is a grant of discretionary power to the Administrator far broader than was approved by either House. The administration and the Federal Energy Office have demonstrated time and time again that they are unwilling to use existing authority to deal with an obvious problem until it reaches crisis proportions. We have seen this in their treatment of the airline industry, the truckers, and now the gas station dealers. It seems to me that a further grant of discretionary power would not bring about carefully thought out plans, but only more stopgap measures that placate a special interest and penalize the consumer. We are at a crucial time that requires considered and deliberate action, with full attention to the possible results of any proposed conservation plans. Now, more than ever, Congress must assert its rightful authority and use its power well.

Equally as disturbing is the vast destruction done by this conference report to environmental standards and safeguards. The statutory requirement for coal conversion **[Sec. 106]** and the accompanying lengthy suspensions of stationary emission standards **[Sec. 119 CAA]** are hardly an emergency matter and there is serious question whether such legislation is necessary at all. Even without a statutory requirement, conversion to coal is occurring at a rapid rate if for no other reason than the fact that it is more economical. As the Environmental Protection Agency already has the authority to grant suspensions of emission limits up to June 1977, it seems to me that these provisions are not needed at this time and in fact will do serious harm as included in the conference report.

I feel similarly that all of **title II**, relaxing various environmental safeguards, is an unnecessary gamble. We have no reason to believe that significant amounts of energy will be saved and we have every reason to believe that our environment and the health of our people will be threatened.

I would much prefer to vote on a truly emergency measure not embellished with so many unnecessary, special-interest provisions. I have introduced such a bill, H.R. 12678, which would allow Congress to meet the emergency without abdicating its right to give new proposals the serious consideration they deserve. Our bill includes a price rollback to November 1 levels with only cost-justified increases above that level; full disclosure of vital oil industry information; authority and administrative procedures for rationing; authority to restrict exports of petroleum products; and establishment of the Federal Energy Administration.

Mr. ECKHARDT. Mr. Speaker, I am in favor of the rule on the conference committee report, and I should like to state as succinctly as I can why I am.

In the first place, this House should always support its rules unless an exceptional situation exists. If an exceptional situation exists, the Committee on Rules has the power to make exceptions to the rules.

I think that the Committee on Rules acted properly in this case in not making an exception with regard to **sections 105 and 110** of the conference report as regards rule XXVIII, clause 3.

Mr. Speaker, let me remind the House that we have gone through this debate before. The point was very well made by the gentleman from California (Mr. Sisk) at the time of the Legislative Reorganization Act of 1970 in which rule XXVIII, clause 3, was strengthened. At that time the gentleman from California (Mr. Sisk) pointed out that under existing rules, and by the relatively lenient interpretations on them at that time, the conferees had been able to come to agreement outside the four corners of either the House or the Senate bill, and arrive at a compromise which had never had the benefit of any consideration by a committee of primary jurisdiction of this House. Therefore the rule was strengthened to prevent this offense.

The discussion of this rule at a later time in 1970 I think expresses the proposition very well.

At that time Mr. Bolling was presenting a report of the Committee on Rules providing for consideration of H.R. 4246, extending certain provisions of law relating to interest rates and cost of living stabilization. In response to Mr. Bolling's statement concerning the rule involved here, in which he referred to the language here involved, Mr. Martin stated:

> **Mr. Speaker, I want to concur in the comments made by the gentleman from Missouri concerning the intent and understanding of the Rules Committee in drafting the amendments to clause 3 of rule XXVIII with respect to the authority of House conferees.**

Here is the language that is pertinent:

> **Stated simply, the intent of the committee was to insure first, that no issue or question not committed to the committee on conference by either House could be included in conference reports, and second, to insure that with respect to those issues committed to conference, no resolution thereof would be reported which had the effect of going beyond the differences as framed by the two Houses in their individual passage of the legislation.**

That is the rule. It is a salubrious rule. It should never be waived unless there is a technical question in which there is so slight a difference between the position of either the House or the Senate which has been altered that the Committee on Rules in its judgment feels that the rule should be waived so that it will not have its severe technical

effect. That is what the Committee on Rules did in this case. The Committee on Rules waived all rules, including rule XXVIII, clause 3, with respect to the bill in general.

But there were two points on which the committee on conference had gone far beyond the authority of either the House amendment or the Senate bill. In these instances there was a quite substantive difference between the position of the committee on conference and the position of either the House or the Senate. Those two cases were in **section 105** of the conference report and **section 110**, and these are the sections which the Rules Committee left exposed to a point of order under rule XXVIII, clause 3.

Mr. ANDERSON of Illinois. Mr. Speaker, House Resolution 901 provides for 2 hours of general debate on the Energy Emergency Conference Report, waving points of order against the conference report with the exceptions of **sections 105 and 110**, and providing for a separate vote to strike **section 104**.

Specifically, this rule would permit a point of order to be raised against **section 105**, which deals with energy conservation plans, and **section 110**, commonly known as the price rollback provision, for failure to comply with clause 3 of rule XXVIII of the House Rules. That rule prohibits the inclusion of new matter in a conference report which was not committed to the conference committee by either House; and it also prohibits the modification of a proposition committed to the conference by either or both Houses if that modification "is beyond the scope of that specific topic, question, issue, or proposition" as committed to the conference committee.

I want to make it very clear that if a point of order is raised against either of these sections for failure to comply with clause 3 of rule XXVIII, and if that point of order is sustained, the section is automatically eliminated from the conference report without further debate or a vote. This is not treated in the same way we deal with a nongermane Senate amendment in a conference report. In that situation, under clause 4 of rule XXVIII, if the provision was adopted by the Senate but is ruled nongermane under the Rules of the House, 40 minutes of debate is provided on the amendment which is followed by a vote on a motion to reject the amendment.

But the situation before us today is governed by clause 3, not 4, of rule XXVIII, and clause 3 is a prohibition against new matter being added in conference or the broadening of the scope of a matter passed by either or both Houses. And under clause 3, unlike clause 4, if a point of order is sustained against a section on these grounds, that section is knocked out of the conference report then and there, unless, of course, there is a two-thirds vote to overrule the decision of the chairman.

If either or both of these sections are knocked out of the conference report, what then is the status of the conference report? Obviously, the House version will be different from that already adopted by the Senate, and the Senate conferees have already been disbanded. Given this situation, the House could ask the Senate for a new conference. We would have the same situation if, as allowed for in this rule, the

House should vote to strike **section 104** which grants standby rationing authority to the President.

It is my understanding that an attempt probably will be made to defeat the previous question on this rule so that an amended rule could be offered to provide for a spearate vote on both the energy conservation plan and rollback sections. I am opposed to such a revised rule for several reasons. First, it seems to me that it would be wrong to start down the road of waiving clause 3 of rule 28, for we would be saying to future conferees that they can completely rewrite legislation in conference and bring back something totally different from what was originally passed by either the House or Senate. I don't want to begin today granting such broad legislative latitude to conferees, for to me that amounts to a dereliction and abdication of the duties and responsibilities of our standing committees and the Committee of the Whole. Clause 3 is a part of the House rules for a very good reason: it places very proper restraints and limitations on the role of our conferees; it is a binding reminder that they are agents representing the positions taken by the Whole House, and they are not appointed as a supercommittee which may superimpose new positions on both Houses.

Second, I would like to make a very practical point. There are some who have argued and will argue today that by granting this type of rule, the Rules Committee has in effect killed the Energy Emergency Act conference report. I beg to differ with that view by submitting that if we throw clause 3 out the window and accept the new matter added by the conferees, we may be saving the conference report but killing the Energy Emergency Act; for make no mistake about it, the conference report as presently written is headed for a veto and I seriously doubt that this body can come close to mustering a two-thirds vote to override that veto. I would therefore challenge the proponents of this conference report to put it to a realistic and practical test today, not by changing this rule, which only requires a majority vote, but by appealing the ruling of the Chair on the point of order, which requires a two-thirds vote—the same ratio needed to override a veto.

Consider, if you will, the real alternatives before us today: if we change this rule and thereby adopt the conference report as it now stands, it will be vetoed, the veto will be sustained, and we will be forced to start from scratch in committee on a new energy emergency bill; and that means bringing this back through the House and Senate again and subjecting it to dozens of amendments, and going to conference again and attempting to reconcile the differences. If, on the other hand, we adopt this rule and the objectional rollback section is knocked out on a point of order, we need only ask the Senate for a new conference and I am confident that this can be resolved so as to avoid a veto. I would ask my colleagues, which of these alternatives is the most realistic and expeditious approach to enacting an emergency energy bill. To me, at least, it is obvious that going the route of this rule is the most practical course in achieving the early enactment of an acceptable energy emergency bill.

In the time remaining, Mr. Speaker, I would like to briefly discuss what is really at issue here today, and that is the controversial [Sec. 110] rollback provision. This section, which was drafted in conference as a substitute for the windfall profits provision in the original House bill, would place a ceiling price on domestic oil production under a formula which would result in an average price of $5.25 per barrel. The President could raise the ceiling for classifications of crude production to prices which are 35 percent over the ceiling, or, in other words, up to $7.10 a barrel. Any cost reductions resulting from this would have to be passed through to lower prices for residual fuel and refined petroleum products.

This rollback provision is designed to do two things: First, provide price relief for consumers from skyrocketing fuel costs; and second, to curtail the bulging profits of the major oil companies.

During the initial Senate debate on February 8, Senator Williams, an avid supporter of the rollback, summed up these arguments neatly:

> I am appalled that this bill has now been delayed even further . . . While all of us recognize the necessity for petroleum producers to receive a fair return on their investment, we cannot allow unrestrained profiteering. We must prevent the energy shortage from draining the consumers bank account the same way it is draining his gas tank. And while we want to make it profitable for producers to expand their production, I think the windfall profits recently reported by *every major oil company* makes it clear that we are going well beyond that point.

Senator Williams' rhetoric notwithstanding, the rollback will [Sec. 110], first, not appreciably reduce consumer prices for gasoline, heating, oil, and other refined products; second, fail to noticeably curtail major oil company profits because last year's increases were not primarily due to higher domestic crude prices; third, impact strippers, small producers, and other independents far more severely than the majors; and fourth, establish a precedent for political manipulation of the energy problem rather than the fashioning of effective long-term solutions. The basis for these assertions follows:

1. UNCONTROLLED OIL ACCOUNTS FOR ONLY 17 PERCENT OF U.S. PETROLEUM SUPPLY

When advocates of the amendment juxtapose skyrocketing consumer fuel prices and $10 per barrel domestic oil, there is a clear suggestion that the rollback to $5.09 will make a substantial difference in the average consumer's fuel oil or gasoline bill. This is highly deceptive because the price of petroleum products is determined by the average price of all crude supplies which go into it. However, only stripper, small producer, and released oil, accounting for about 25 percent of total domestic supply is selling at $10 per barrel.

The rollback will not affect the remaining 75 percent which is already controlled at $5.25 per barrel or less, nor will it affect the price of almost one-third of our daily supply which is imported. Thus, as is shown in the table below, the full rollback will lower the average price of U.S. crude by only 80 cents per barrel or 2 cents per gallon of gasoline; if the 35-percent increase option is exercised by the President so that prices are only effectively rollbacked to the $7.09 maxi-

mum level, the average crude price will be lowered by 49 cents per barrel or slightly more than 1 cent per gallon of gasoline:

IMPACT OF ROLLBACK ON AVERAGE CRUDE OIL PRICE

Source	Share of total supply (percent)	Current prices	Prices with rollback	
			Maximum [1]	Minimum [2]
Domestic controlled	50.6	$5.00	$5.00	$5.00
Domestic uncontrolled	16.9	10.00	5.25	7.09
Imported [3]	32.5	10.00	10.00	10.00
Weighted average price [4]		7.47	6.67	6.98

[1] Full rollback as provided for in conference report.
[2] Assumes President exercises option to increase rollback price by 35 percent to $7.09.
[3] Some of this is landed in the form of product refined overseas and in the Carribbean but it is still refined from foreign crude sailing for $10 per barrel.
[4] Weighted average price (plus) equals 0.506 domestic controlled plus .169 domestic uncontrolled plus 0.325 imported.

2. SEVENTY-EIGHT PERCENT OF MAJOR'S 1973 PROFIT INCREASE DERIVED FROM OVERSEAS OPERATIONS

If the Jackson rollback will not affect consumer prices appreciably, neither will it do much to restrain the much publicized profit gains of the major integrated producers. [Sec. 110.] According to a Business Week survey, the 30 top U.S. petroleum companies increased their combined earnings from $6.8 billion in 1972 to $10.5 billion, or by about 54 percent, during 1973. However, the profit increase on foreign operations was a much more modest 20 percent. As a result, $2.9 billion of a total worldwide profit increase of $3.7 billion is attributable to overseas operations.

This huge disparity is due to the fact that profits on overseas operations had slumped considerably during 1972 and then rose precipitously during the second half of 1973, and, perhaps more importantly, to the fact that these 1973 overseas profits were being counted in sharply devalued dollars. Exxon, for example, maintains that more than $120 million of its 1973 profits were merely paper gains attributable to devaluation. In any case, whether paper or real, fully 78 percent of the major oil company profit increase was due to the vagaries of foreign economic developments, something totally outside the reach of a domestic crude price rollback.

3. DOMESTIC CRUDE OIL SUPPLY IS NOT DOMINATED BY MAJORS

The U.S. petroleum industry is often assumed to be as highly concentrated as the steel industry, in which the top four firms control 50 percent of production and the top eight control 66 percent, the rubber industry, where the ratios are 70 percent and 89 percent respectively, or electrical equipment where the ratios are 60 percent and 78 percent for the top four and eight firm share of the market. While this image is accurate in some measure at the transportation, refining and distribution level, it would not appear to be true at the initial stage of production where the proposed price rollback would have its impact.

As is shown in the table below, the top four companies accounted for less than 30 percent of domestic petroleum production in 1972.

More significantly, this share was almost equalled by the thousands of small independent producers, who, producing less than 1,000 barrels per day, do not even show up in the top 90 companies.

SHARES OF DOMESTIC PETROLEUM PRODUCTION, 1972

Company rank	Production (millions of barrels per day)	Share of production (percent)
1 to 4 (Exxon, Texaco, Gulf, Shell)	3.25	29.1
5 to 8 (Chevron, Amoco, Arco, Mobil)[1]	1.80	16.1
9 to 23 (Union, Getty, Sun, Phillips, Continental, Cities Service, and 8 others)	1.48	13.2
23 to 37	.95	8.5
38 to 90	.66	5.9
All others	3.04	27.2
Total	11.18	100.0

[1] Chevron—Standard Oil of California; Amoco—Standard Oil of Indiana; Arco—Atlantic-Richfield Co

It should be stated that these figures are not precise because they were pieced together from two different sources—Office of Oil and Gas and the FTC—and from 2 different years—1970 and 1972. Nevertheless, they give a working approximation of industry structure at the production level, and make clear that in an effort to swat at the bloated profits of the dozen or so large integrated majors, the Jackson amendment **[Sec. 110]** would directly affect hundreds of independent producers who account for a large share of total production.

Moreover, it is likely that a large share of the current "uncontrolled oil" is attributable to producers on the bottom end of the ranking, rather than the large majors at the top. This is due to the fact that at least half of the roughly 2.7 million barrel/day of uncontrolled production is accounted for by stripper wells or wells producing less than 10 barrels per day. These were explicitly exempted from controls by the Alaskan pipeline conference report rider amendment. Thus, half of the oil subject to the rollback is produced by firms who do not even show up in the top 90 companies in the industry.

The remainder of uncontrolled oil is accounted for by so-called "new" oil and "released" old oil that was decontrolled by phase IV in August. Undoubtedly, the majors are producing some of this, but industry trade publications suggest that most of this "new" oil—and the corresponding amount of exempt "old" or "released" oil—is accounted for by independent and small producers. We expect to get more definite data on this Tuesday.

Two things should be noted about these considerations. First, it is the strippers and small producers who have been hit hardest by rapid increases in prices of oilfield supplies, machinery, and services because they frequently make these purchases on the used or spot market over which the stabilization program exercise no price control. Just as oil prices have risen to an unsustainable short-run level due to temporary shortages, there is considerable evidence to indicate that those producers not protected by large supply inventories or long-term supply contracts—that is, nonmajors—have experienced the same phenomena on the "input" or production cost side of the industry. Concomitantly, as oil prices must come down when the boycott ends and new supplies are brought onstream, these rapidly rising costs of production should

also subside as suppliers produce more oilfield machinery, equipment, and materials. Thus, the market is in disequilibrium on all sides and any effort to impose order by edict is bound to produce inequities and distortions. Indeed, given the likely distribution of production subject to the rollback, it is probable that those producers who would be affected most severely are also those who have the least ability to resist these short-run increases in production costs.

Although I think the industry scare stories about production disincentives due to the rollback are largely unwarranted, it should also be remembered that short-run price prospects are likely to have the strongest effect on the marginal, under-capitalized producer who will be hit hardest by the rollback. Since it seems inevitable that in the next 2 or 3 years crude prices will stabilize in the $7/barrel range, the large majors can afford to wait it out. By contrast, the prospect of continued political manipulation of oil prices may substantially reduce the ability of small producers to raise capital for expanded production.

Viewed in the abstract, the industry can readily survive the Jackson price rollback. [Sec. 110.] As he has pointed out on a number of occasions, as recently as 6 months ago, most industry spokesmen were saying that a price in the $5 range would be more than ample to bring on additional long-term supplies. Nevertheless, the point here is that the actual economic victim of the rollback is likely to be just the opposite of the intended political target. If anything, the rollback would probably allow the majors to sustain or increase their share of the crude production market whereas the current two-tier system is working to decrease it.

4. PRICES, PROFITS, AND PRODUCTION IN THE LONGER TERM

The rollback provision [Sec. 110] is largely a political response to the fact that within a short 5-month period reported petroleum industry profits skyrocketed while consumers have felt the first serious energy supply/price pinch since World War II. In my view, Jackson's effort to forge a populistic linkage between these two contains double mischief. On the one hand, it will only defer the adoption of an appropriate policy response to the longer term energy crisis—that is, curtailment of demand and expansion of supply through attainment of a new, higher price equilibrium—and, on the other, will compound, and set precedent for further compounding, the underlying problem that national policy must rectify. The conference report should therefore be defeated so that this counterproductive linkage can be nipped in the bud. The next section presents some alternative, but more benign, means by which consumer sentiment can be mollified. This section focuses on why the current clumsy attempt to manipulate petroleum prices and profits is so misguided.

In the first place, the measurement of aggregate profits on a quarter-to-quarter or year-to-year basis is next to meaningless in economic years. The year 1972 represented the culmination of a 4-year period of petroleum industry profit stagnation; in real dollar terms, 1972 oil profits were 10 percent below 1968 profits, compared to a 12-percent increase in real GNP during the same period. In the case of many individual companies, the inappropriateness of the 1972 base year is even more dramatic. As is shown in the table below, 1972 profits ex-

pressed in constant dollars were from 20 to 60 percent below 1968 levels for 11 of the 13 companies. Moreover, while all of them reported huge 1973 increases over 1972, ranging from a low of 24 percent for SOHIO to a phenomenal 267 percent for Clark, nearly half of them had 1973 profit levels which were still below 1968 levels in constant dollars; only 5 of the 13 companies had 1973 profit increases over 1968 which were larger than the 18.5-percent increase in real GNP during the same period. Thus, it can be fairly said that screaming press headlines have seriously distorted the real profit situation in the oil industry:

PETROLEUM INDUSTRY PROFIT CHANGES, 1968–73

[In percent]

Company	Reported 1972–73 increase	1972 compared to 1968 [1]	1973 compared to 1968 [1]
Marathon	62.1	—19.9	23.5
Phillips [2]	55.2	—24.7	11.7
Gulf	70.0	—40.3	—3.5
Shell	28.0	—30.2	—15.2
SoHio	24.1	—28.7	—15.9
Union	44.9	—32.4	—4.3
ARCO [3]	40.4	—26.2	—2.1
Cities Service	36.8	—31.6	—11.1
Amerada Hess	228.6	—57.2	34.0
Clark	267.5	—42.8	100.0
Continental	42.6	—5.1	28.6
Exxon	59.2	.3	51.9
Sun	48.7	—21.3	11.2

[1] Constant dollars.
[2] 1967 base period.
[3] 1969 base period.

Source: Office of Tax Analysis, Treasury.

Whatever the base year chosen, however, profit volumes are not a good way to measure the profitability of business because they give no indication of the changes in the volume of sales or the stock of invested assets which produced them. The legitimate way to measure profits is not in aggregate terms but as a rate of return on investment. Though the media and the demogogs may conveniently ignore these figures, they are the only way of measuring an industry's performance relative to other sectors—by definition "excess" profits must be excess in relationship to some independent standard—and are also the primary consideration of investors and others who supply capital for increased production. In large measure, whether or not we are successful in generating the new domestic capacity needed to achieve energy independence will be a direct function of the cost of capital for energy investment, which in turn will vary closely with the rate of return.

The table following compares petroleum rates of return over time and in relationship to other sectors of the economy. Four trends are noteworthy:

First. Prior to the 1960's, the petroleum rate of return was slightly above the average for manufacturing, including both the durable and nondurable sectors, but considerably below the really high profit industries like automobiles and high technology instruments and computers.

Second. During the sustained economic expansion and boom of the 1960's, industry generally boosted rates of return above the historical

average; this was true for both traditionally high and low profit sectors. By contrast, petroleum moved in just the opposite direction as the industrywide trend during this period (column 2), sustaining a lower average rate of return than during the 1950's.

Third. After the peak of the economic cycle in 1967–68 profits in most industries deteriorated sharply, hitting bottom with the trough of the 1970 recession. As the economy recovered in 1971–72, profits recouped even more dramatically—although not fully to 1963–68 levels. Petroleum industry profits also declined but subject to a unique lag. Instead of bottoming out in 1970 and then recovering during the next 2 years, they continued to seriously deteriorate through 1972. This lag is the primary reason for the so-called profit surge in 1973: in reality, the petroleum industry was making a 1-year recovery of the magnitude that other sectors took 3 years to accomplish.

Fourth. Despite the aggregate profit surge of 1973, petroleum profits are still below the manufacturing average—at least for the first three quarters covered by this data. Indeed, the secular trend seems to be that petroleum profits have moved from a place traditionally somewhat above the industry mean to a place somewhat below the average during the last two decades. If excess profits is really such a concern, then 1973 profits for automobiles (16.4), high technology and computers (16.1), chemicals (14.9), lumber (24.5) or nonelectrical machinery (13.3) would seem to be far higher priority targets for action. Given the capital intensity of the petroleum industry and the $100 plus billion that will be needed for new investment before 1980, it seems difficult to conclude that profits or rates of return have yet really gotten out of hand.

PETROLEUM INDUSTRY RATES OF RETURN RELATIVE TO OTHER INDUSTRIES, 1950–73

[In percent]

Industry/Sector	Average rate of return		Actual rate of return		
	1950–59	1963–68	1970	1972	1973 [1]
Petroleum	12.7	11.9	11.0	8.7	10.8
All manufacturing	11.3	12.2	9.3	10.6	12.6
Durables	11.9	12.3	8.3	10.8	13.2
Nondurables	10.8	11.8	10.3	10.5	12.1
High rate sectors:					
Motor vehicles	15.3	16.0	6.1	14.7	16.4
Instruments and computers	12.6	16.6	14.3	14.9	16.1
Low rate sectors:					
Iron and steel	10.7	8.5	4.3	6.0	9.2
Textiles	5.8	8.7	5.1	7.5	9.4

[1] 1st 3 quarters only.
Note: All figures expressed as after tax rates of return on stockholders' equity.

Source: Economic report of the President, 1974.

Part of the reason for the serious deterioration in petroleum rates of return—from a peak of 12.5 percent in 1966 to 8.7 percent in 1972—was a price/cost squeeze at the production level, traditionally the major source of petroleum profits. As is so shown in the table below, average domestic crude prices rose about 21 percent from 1964 to 1972, while costs of drilling—the major production expense—increased by 65 percent per well-foot. More importantly, in terms of

cost per successful well, costs rose by 90 percent or four times the price rise during the same period:

OIL PRODUCTION COSTS AND PRICES, 1964–72

	Average crude price	Drilling cost per well-foot	Average cost per successful well
Year:			
1964	$2.88	$10.80	$334,000
1968	2.94	13 40	562,000
1970	3.18	16.13	575,000
1972	3.50	17.72	633,000
Percent change 1964–72	21.5	64.1	89.5

Source: American Petroleum Institute.

The profit slump brought about by this cost/price squeeze had a number of important effects on the ability to finance new exploration, development and production capacity. As the oil industry has traditionally financed a large portion of new investment out of retained earnings, the relative profit slump forced them to turn more heavily to external sources. Given the general stock market slump during this period and the unattractiveness of low industry rates of return, however, this meant primarily debt rather than equity financing. As a result, the ratio of debt to total capital for the industry climbed from 16 percent in 1968 to 24 percent in 1972. While these ratios vary from industry to industry and there is obviously no absolute standard, most investors and financial analysis are wary of such high debt ratios in a high risk industry like oil. The inevitable consequence is higher financing costs per unit of physical capital in external markets. Efforts to rollback allegedly excessive profits will only compound this problem because it will lower the amount of internally generated capital and force the companies to do even more high cost external financing. Since there is no such thing as a free lunch, consumers will sooner or later end up paying higher prices to cover higher capital service costs, or alternatively, will have to put up with shortages and inconveniences longer than otherwise.

This latter possibility is underscored by the data for exploration and development activity during the latter part of the 1960's and early 1970's. As is shown in the table below, both the number of wells drilled and the footage drilled declined steadily during this period. As a result, additions to reserves and the reserve production ratio fell to dangerously low levels. Whereas new reserves added in 1955 equalled 118 percent of production that year, by 1972 new reserves amounted to only 47 percent of annual production.

The adverse trends in these latter two indicators are the primary reason why we currently have such limited ability to quickly expand domestic production. If for political reasons Congress wants to continue to keep the petroleum industry locked into low profit levels

[Sec. 110] relative to the risk involved, it is difficult to see how domestic production capacity can be expanded to self-sufficiency levels:

TRENDS IN EXPLORATION AND DEVELOPMENT AND RESERVES

Year	Wells drilled	Footage drilled (thousands of feet)	Reserves added (millions of barrels)	New reserve/ production ratio
1955	14,937	69.1	2,870	1.18
1964	10,747	55.5	2,664	1.00
1968	8,879	53.9	2,454	.78
1970	7,693	45.3	(1)	(1)
1972	7,129	52.8	1,557	.47

[1] Not meaningful because of 1-yr bulge of Alaska discovery add-on.

Source: American Petroleum Institute.

5. ALTERNATIVE POLITICAL RESPONSES TO THE OIL PROFIT QUESTION

Clearly the perception that oil profits have become excessive is a political problem that cannot be ignored. Since the public insists on action, even if only symbolic as in the case of the rollback [Sec. 110], the real need is to find some way to constructively channel it. In my view, modification or repeal of the special petroleum industry tax breaks would be a far wiser course than direct manipulation of prices and profits. The depletion allowance, for example, is said to be worth roughly 50 cents per barrel, but even the price of "old" domestic oil has risen far beyond that amount in the last year. The intangible drilling expense allowance, which is worth even less on a per-barrel basis, is in the same category, as is the foreign tax credit on 100 percent of royalty payments.

It seems to me that the pending energy tax bill soon to be reported by Ways and Means should offer plenty of opportunity for castigating the oil companies for raiding the treasury, taxpayer financed bonanza and the like, and at the same time for fashioning good public policy. The depletion allowance and other tax breaks are essentially taxpayer subsidies that keep the true cost petroleum products lower than what would otherwise prevail in the private market. As such, they encourage some measure of overconsumption—a pattern we are trying to reverse with other energy conservation programs—and result in an arbitrary transfer of income from general taxpayers to specific energy consumers. Milton Freedman and other market economists have long argued against the depletion allowance on just these grounds, but never before now has there been a more propitious moment for taking action.

By doing so, we could appease the public and improve national energy policy in one stroke. The price rollback [Sec. 110], by contrast, will only disillusion the public, as the promised benefits fail to materialize, and lead to a retrogression in policy that might not be reversed for some time to come.

Mr. ECKHARDT. Mr. Speaker, the gentleman made an excellent statement and in his statement he has shown the extremely difficult and technical nature of the new matter which is brought into this bill.

Will the gentleman confirm to me that the price of $7.09 to which oil could move under the bill could apply to both old and new oil?

Mr. ANDERSON of Illinois. Absolutely, and for that very reason I would say to the gentleman, it was correctly pointed out in our committee, we should not even call this a price rollback provision. [Sec. 110.]

I think the gentleman who just spoke suggested it was rolling forward the price of oil to that of control at a lower price than the $7.09 per barrel.

Mr. ECKHARDT. It could be a roll forward from $5.25 to $7.09 on 70 percent of the oil that the country produces; could it not?

Mr. ANDERSON of Illinois. The gentleman again is absolutely correct, because what we are talking about when we talk about uncontrolled oil, we are talking about between 25 and 30 percent of the production of this country. We are not touching with this price rollback 75 percent of the oil that goes in to make up the overall price of crude oil in this country.

Mr. ECKHARDT. Except possibly to increase the price on that oil, is that correct?

Mr. ANDERSON of Illinois. Exactly. I would submit further that this is not a price rollback, this is a production rollback. This is telling the entrepreneurs, the independent producers in this country, those many times under capitalized producers, "You go out of business and let the big boys, let the majors who can afford to sit back and absorb that lower price and can afford to wait until this moment of folly passes and prices seek their own level in the market, and then they will go in and capture a bigger share of the domestic crude production than they have at the present time."

What kind of nonsense is that?

Mr. ECKHARDT. Mr. Speaker, if the gentleman will yield briefly further, furthermore with respect to that oil which is commanding a higher price today, that is, new oil; explored oil, it is my understanding—but I understand it would in truth and in fact roll back the price that independent producers could get from their new exploration; that is, the oil that now can be brought on to the market which requires additional expenditures because it is deep or difficult to obtain. So, in effect, we roll back those who are exploring and risking their capital and we roll forward those who do not need increases but are making inordinate profits.

Mr. ANDERSON of Illinois. Mr. Speaker, the gentleman from Texas has stated the case, I think, very succinctly. His argument reemphasized the argument I have sought to make. If we want to help the consumers, for God's sake, do not vote for a provision [Sec. 110] in a piece of legislation that is going to have the very obvious, almost immediate effect of discouraging the very efforts that have to be made for additional exploration and production.

Mr. Speaker, the gentleman from Texas has talked about the increased need for funds for the difficult to reach oil, such as deep oil. The gentleman from Illinois knows that in the Illinois-Indiana basin most of the oil is now coming from what we call stripper wells. These are wells which have declining production. The people operating them now have the option of expending considerable funds for water injec-

tion, chemical injection, or other procedures needed to go after the secondary and tertiary production.

Mr. Speaker, at the present time, as soon as the well becomes unproductive at the current price, these operators are required to fill the hole with concrete and they lose forever some 30 or 40 percent of the oil potentially available in our area of the country.

Mr. Speaker, I ask the gentleman, if the Federal Government is going to put a ceiling on the money that can be received from them, would these producers have adequate incentive to go to these very expensive procedures in order to continue the production of stripper wells?

Mr. ANDERSON of Illinois. Obviously, the answer to the gentleman's question is "No." If we discourage production and cut out incentives to explore and produce, it immediately becomes economically unfeasible for them to get that out to the extent that we are increasing the supply of oil.

Mr. BROWN of Ohio. Mr. Speaker, I have been fascinated by the colloquy between the gentleman from Illinois (Mr. Anderson) and the gentleman from Texas (Mr. Eckhardt) because it seems to me that it brings into focus the whole argument against the so-called rollback provision. **[Sec. 110.]**

Mr. Speaker, I gather from what both these gentlemen have said that the effect of that rollback provision is going to be to reduce the supply of oil that we now have in this country and increase the price of whatever petroleum products we have left. Is that correct?

Mr. ANDERSON of Illinois. Exactly, and not do one thing about 75 percent of the crude oil we use in this country.

Mr. BROWN of Ohio. And that does not even speak to the parliamentary precedent we are setting if we go ahead and change the rule here and allow the consideration of previously unconsidered material?

Mr. ANDERSON of Illinois. Mr. Speaker, the gentleman is correct.

I will ask the gentleman this question: Since stripper wells have been producing and have been brought back into production, how much has that meant in terms of the production of oil in the country in the past year?

Of course, the figures which I gave earlier indicate that exploration generally has been on the decline, and the ratio, as I say again, between current production and reserves has gone down precipitiously, from 118 to 47 percent, because the economic incentive has not been there.

Mr. Speaker, I submit that this is exactly the wrong time, with lengthening gas lines and considering our desire to attain the goal of petroleum independence, to adopt this kind of legislation, legislation which does not make any legislative sense.

Mr. MAHON. Mr. Speaker, I wish to commend the gentleman from Illinois for putting this whole problem in better focus.

The oil industry is a rather complex industry: as a matter of fact, the entire energy industry is complex. However, the gentleman hit the nail on the head when he said simply that this conference report represents a production rollback. It is just that simple.

I would ask this: Who among us wants to go home and defend a production rollback? I do not.

Mr. ANDERSON of Illinois. Mr. Speaker, I will not yield further to other Members at this time, since there are others who have asked for time.

Mr. Speaker, let me simply conclude at this time by imploring the Members of this House not to yield to what is a totally false and illusory solution to a very real problem. Let us vote up the previous question, adopt the rule, and get on with the business of considering an energy bill.

Mr. MACDONALD. Mr. Speaker, I appreciate the colloquy which took place among the two gentlemen from Texas and the gentleman from Illinois, and I appreciate their eloquence, and in some ways, their excitability.

However, I do not believe they touched on the real issue that we are to be faced with very soon, within the very near future, and that is whether or not to permit every Member to be recorded, since each Member's constituents would like to know where he stands concerning rollback. They would like to know where each Member stands as far as rollback [Sec. 110] is concerned and as far as the two other matters which will follow price rollback, conservation [Sec. 105] and rationing known to be exercised by the President. [Sec. 104.] That is the real issue.

Now, I listened to the words of the eloquent gentleman from Illinois, when he said that this upsets the orderly procedure of the House. Well, in some ways, of course, he is right. It is a little unusual. But then, too, the present rule was a little unusual as well.

Mr. Speaker, I would recommend to the gentleman, even if it is not true in Illinois, that it might be important for him to try to get gasoline in an orderly fashion here in Washington, D.C., where I get gasoline, and/or in Massachusetts where they are lucky to have any gasoline at all. I think that the rights of the public are more important at this particular juncture than upholding the antiquated rules of this House.

I have no quarrel with the Committee on Rules. They did what they thought was right. It was a very close vote on all three issues. However, it is getting a little ridiculous for us now to go back and tell the public we are trying to protect them and we are trying to do what is right without actually being recorded as to where they stand on this important bill.

I agree with the gentleman who said there has been a lot of debate, but there have not been any votes.

So all we are asking for at this moment is this: We must recognize that all the arguments that have been made for the rule are not all completely true, and I can give concrete examples. I am not going to get into a dispute at this juncture, since I do not have time, but all the figures that are given have been unofficial figures which come from the oil industry itself, as I think the gentleman from Illinois knows. There are no official Government figures. One can get figures from no department in the Government that are believable or official.

Now, it is the proponents of the people who want this rule upheld, and who start calling these industries the "bloated seven sisters." I do not really care if they are bloated or not bloated.

Everyone in America, in the American system, is in business for profit. But when a business or an industry reaches the state where they

can put out their hand and stop the orderly democratic procedures of this Congress, then it is time for us to put up or shut up and go back to our constituents and say, "You may not agree with what I did, but at least I did what I thought was right for you." I urge a no vote on the rule.

Mr. PEPPER. Mr. Speaker, I yield 1 minute to my able colleague, the gentleman from Florida (Mr. Rogers).

Mr. ROGERS. I thank the gentleman for yielding.

Mr. Speaker, I understand the arguments that are made by those who represent the oil States. It is certainly their very sincere judgment that they are expressing, but I happen to come from a consumer State where people are ready for the Congress to do something about this question. They are tired of standing in line in order to get gasoline.

I do not think the oil companies are really concerned so much about this price rollback **[Sec. 110]** which goes to $7. Where old oil is being sold for $5.25, this bill says that we will let new oil go to $7 or slightly over $7. The oil industry itself testified earlier that they thought just over $4 would be sufficient through 1980 in order to give them an incentive. If you will bring that up to the current dollar price, it is about $4.35 or $4.50.

The main thing that they are concerned with is that in this bill it says the Federal Energy Office will have the authority to make the petroleum industry report their reserves and what they have stored and where this gasoline is. **[Sec. 124.]** The American people are looking to us in this Congress to provide that authority, and that authority is in this bill. We can later change the rollback provision **[Sec. 110]** if we need to, but we had better get on with the job and find out how much oil we have.

Let us vote down the previous question and then vote for the rule which Chairman Staggers will present.

Mr. RHODES. Mr. Speaker, the situation as I see it right now is that very shortly we will have a vote on the previous question. If the previous question is voted up, then presumably the rule will be adopted.

The rule provides, among other things, that points of order may be made against the section which deals with the rollback of prices on oil and gas. **[Sec. 110.]** As I understand it, if the point of order is made, there is every likelihood it would have to be sustained.

I think that is a salutary situation, because I associate myself completely with the remarks of the gentleman from Illinois (Mr. Anderson) and the remarks of the gentleman from Texas (Mr. Eckhardt) as to the probable effects of this rollback provision.

The people of the United States of America, unless I am badly mistaken, want more gasoline and they want to get that gasoline just as rapidly as they can. They are not interested in having people make inordinate profits on that gasoline, but their priority runs just about like this: Give us the gasoline and worry about the excess profits later. That is exactly what I hope this House, the Senate, and the administration are programed to do.

If it is possible to get this bill adopted, then, of course, the next thing we should address ourselves to is the question of excess profits. As a matter of fact, the Committee on Ways and Means is now addressing itself to this problem of excess profits. An excess profits tax is the best mechanism by which the American people can be assured that no-

body will make inordinately large profits because of the energy crisis. Nobody wants inordinately large profits. It is not in the minds of any of the Members of the House to allow it to happen.

The best thing to do is to vote up the previous question. Then we can do what is necessary to remove the rollback provision from this bill. **[Sec. 110.]**

I understand there have been some rumors going around the floor—of course, this is a very good rumor mill on the floor—that when the chips are down, and this bill is sent to the President, he will sign it.

Mr. Speaker, let me tell all the Members, with all the sincerity at my command, that is not the situation. If this conference report goes to the President of the United States with the rollback provision **[Sec. 110]** in it, the President will undoubtedly veto this bill. He will veto it because, as he has said, he wants a bill which will produce more energy rather than less energy. In my opinion, the bill, in its present form, would produce less energy in the long run.

Mr. ECKHARDT. Mr. Speaker, the gentleman from Florida (Mr. Rogers) pointed out that there was something in this bill with respect to petroleum reporting. Will the gentleman from Arizona confirm to me that the same general type of provision is in the Holifield bill that creates the Federal Energy Agency, and concerning which there is very little dispute on this floor— and that if this bill were out of the way we could proceed with that bill almost immediately?

Mr. RHODES. The gentleman from Texas is absolutely correct. In fact, I have been wondering all along why we have not already taken up and passed the FEA bill. The FEA bill, which was worked out to allow the Energy Administration to do the things which the gentleman from Texas has mentioned. Moreover, and even more importantly, it is necessary in order for the FEA to be able to recruit the people who are necessary to do the job that has been entrusted to this office.

I am told by FEA Administrator Simon that he is terribly handicapped by lack of personnel. He cannot get people to go to work because his office is set up on a temporary basis. So I believe that it is necessary that we enact the FEA bill, and the other energy bills in the administration's package. I hope we will be able to do that just as soon as we dispose of the present bill here.

Mr. ECKHARDT. Mr. Speaker, I thank the gentleman for yielding.

Mr. RHODES. Mr. Speaker, at this time I would like to include a copy of a letter addressed to me from Deputy Secretary Simon, dated February 20, 1974.

[The material referred to follows:]

THE DEPUTY SECRETARY OF THE TREASURY,
Washington, D.C., February 20, 1974.

Hon. JOHN J. RHODES,
House of Representatives,
Washington, D.C.

DEAR JOHN: The Energy Emergency Conference Report (S. 2589) which soon will be before the House of Representatives contains so many objectionable provisions that the President will have no choice but to veto the bill should it reach his desk in its current form.

We do believe that additional statutory authority is needed in the energy area, and the Energy Act does address several of these areas. We do need the authority to mandate conservation measures. **[Sec. 105.]** We do want direct authority to institute end use rationing. **[Sec. 104.]** We do want authority to

require conversion of power plants, so that greater use may be made of coal. [Sec. 106.] Finally, we do support changes in the environmental area [title II] which the Act also addresses. Nevertheless, in total, the legislation goes far beyond these areas and has so many unworkable provisions and unwarranted controls that it would exacerbate the fuel shortage rather than relieve it.

For example, the provision [Sec. 110] which would "roll back" the price of all crude oil to an artificially established price creates economic uncertainty and would have the effect of discouraging production of domestic crude oil at a time when the Administration's policy and the Nation's need is to increase supply. We need flexibility in setting prices so that we may be sure that prices will be reasonable to the consumer and yet will stimulate needed investment and increase domestic production. Our experience in administering the crude allocation program has shown how difficult it can be if enough flexibility is not provided by statute. We asked Congress not to require the allocation of crude oil at all levels, but the current law does so and makes administering such a program most difficult.

We must work together to build a strong domestic energy industry so that our country will not be so dependent on foreign sources of crude oil. At the same time, we are concerned that the industry does not profit excessively at the expense of the consumer. I feel the President's "windfall profits" proposal will assure that no one will take advantage of the shortage by unreasonable profits.

Another unworkable portion of the Act is the creation of the Federal Energy Emergency Administration. [Sec. 103.] It contains virtually no administrative authorities, no viable executive structure and no provision for continuity with existing activities under the Federal Energy Office. We prefer enactment of a measure more along the lines of the Energy organization already passed by the Senate and now on the House calendar. We must have the right kind of agency to do the proper job.

An unworkable employment assistance provision [Sec. 116] is also included in the Conference Report. The states would determine eligibility using vague open-ended guidelines that would make it very difficult to define unemployment due to "the energy crisis." We support the President's unemployment compensation proposals pending before Congress which are workable and reasonable.

The legislation before the Senate contains authority for HUD and SBA to make low interest loans to homeowners and small businesses to finance installation, storm windows and heating units. [Sec. 130.] If every eligible homeowner and small businessman took advantage of this section, the government could spend as much as $75 billion on this provision alone. The actual energy savings produced by these vast expenditures would be disproportionately small.

These are just a few of many objectionable features of S. 2589. It unfortunately contains very few needed authorities and imposes costly requirements that hinder rather than help deal effectively with the energy shortage. There are some provisions in this bill, such as the requirement for increased reporting of energy data [Sec. 124], which are important. However, every one of these provisions is addressed in separate and more reasonable legislation already in the Congressional process.

I know most Members of Congress are eager to be helpful in solving fuel problems, but the Conference Report now before the House will have the opposite effect. The President, after careful consideration, has decided that the only reasonable course is for him to veto S. 2589.

With warm personal regards,

Sincerely,

WILLIAM E. SIMON.

Mr. WILLIAMS. Mr. Speaker, as I understand this matter, if we vote up this rule today there are sections in this bill which are subject to a point of order, and the objections based on a point of order will be sustained.

If we vote down the previous question, I understand the rule to be proposed by the gentleman from West Virginia (Mr. Staggers) will waive all points of order, and permit separate votes on **sections 104, 105, and 110** and, Mr. Speaker, I think this is the way we could work the will of this House today.

If we reject any of these three sections upon which we can have a separate vote then we will move forward today with measures to solve the energy crisis.

I did not quite understand the comments made by the gentleman from Illinois (Mr. Anderson), when the gentleman agreed with the gentleman from Texas (Mr. Eckhardt), that **section 110** could mean a price increase, and at the same time reach a conclusion that **section 110** could be a production rollback.

The fact of the matter is that **section 110** sets the price of a barrel of oil in a given area at the same level that it was on May 15, 1973, plus it also gives the President the right to set prices not to exceed 35 percent. If that is not coming close to a windfall profit, I do not know what is.

So I would urge, Mr. Speaker, that the previous question be voted down so that we can have the separate votes on these three issues, and if any of these sections are voted down then we can go back to conference.

Mr. MACDONALD. Mr. Speaker, I appreciate the gentleman from Pennsylvania yielding to me, and I would like to point out that so far as the costs are concerned that in January of this year the Independent Petroleum Association of America was asking for a price of approximately $6.65 per barrel, and said that if they got that price they could maximize domestic production by 1980.

In January of this year, Deputy Secretary Simon stated that the long-term supply price of crude oil; that is, the level needed to bring supply and demand into balance and to eliminate the shortage—in his own words—would be in the neighborhood of $7 per barrel within the next few years. The gentleman is 100 percent correct.

Mr. WILLIAMS. Mr. Speaker, I would just like to conclude by urging my colleagues to vote down the previous question and adopt the rule proposed by the gentleman from West Virginia (Mr. Staggers), because there are very important issues in this conference report, including **section 111**, protection of franchised dealers.

Mr. WAGGONNER. Mr. Speaker, I urge the Members of the House as sincerely as I can to sustain this rule and vote "aye" on the previous question. This procedure makes a mockery of House rules.

The reason we are having a problem today with this legislation stems from the very simple fact that last year when the same emergency was portrayed to exist, the distinguished gentleman from West Virginia (Mr. Staggers) supported an amendment to the energy bill at that point in time which would strike coal from the windfall provisions of that proposal, but he as a matter of equity refused to do so in an unworkable situation for oil and gas. This is the only reason that the problem exists today.

Let me remind you that when a problem arises in this country, the attitude today is, get Congress to do something about it. All Congress knows to do about a problem in these days is to regulate and stagnate with too much regulation.

This Congress passed an allocation bill last year, and we heard all of these promises of what the allocation bill would do to solve the problem of energy and its supply. This allocation bill, even in the minds of the Washington Post, if you can believe that, is a total and dismal failure and has to be repealed or drastically modified.

The problems we are having today with the supply of crude comes from that allocation bill. Some of us tried to tell you that there were only two things that could happen if we passed that allocation bill: we would disrupt feedstocks, and we would raise the price. This has happened, but we have not learned our lesson yet.

Then this House was told to pass a year-round daylight saving time bill. Let us do something about saving more energy. Almost all of you who voted for it today would like to have that little vote back, would you not, when you face these mothers and fathers who are complaining about what these youngsters are having to put up with when they have to go to school early and in darkness.

This bill will hurt; it will not help. The problem in this country is supply does not meet demand. That means with the problem we have we have to have more energy. We cannot get it with more regulation. We can only make the problem worse, and that is exactly what is going to happen.

Most all Members here today say that you want to provide here at home an incentive to provide for increased exploration and to provide after awhile for self-sufficiency. But, believe me, if we roll the price of American domestic crude back below the market price on a worldwide basis, these people are going to continue to send these dollars overseas and explore overseas. They are not going to invest sufficiently these dollars here in the United States to provide for self-sufficiency. It does not work that way. An investor has to have a return on his money.

Listen to me again. We are going to nullify the provision that we wrote into the allocation bill exempting stripper wells.

You have heard many times that this is a large part of our production, production which is marginal, production which can be lost at any time. On January 1, 1973, there were 359,471 stripper wells in this country and their average production was 3.13 barrels a day. You should put your economic pencil to that statistic and decide what you are going to be doing to that marginal production. Give some consideration to the cost for secondary and tertiary recovery if you are interested in more supply in this country.

We have got to have more energy. But to get more energy we must think about the economics of the situation. We have got to have more capital. The oil and gas industry alone by all responsible studies is said to demand by 1985 some $450 billion to meet their capital needs. Where is that money going to come from? For all energy sources to provide self-sufficiency by 1985 it will require $1.350 trillion of capital.

Are we going to let these people make a reasonable amount of money so they can do this, or are we going to roll the price back, shorten the supply, and not solve any of this Nation's problems? Think about the capital demand. It can not all be borrowed and the Government does not have the money either.

What we are proposing today is not even going to be good short-range politics. We are not attacking the substance of the issue. But if you think it is even good short-range politics to do this and let the problem become worse, then let November come and tell the people you are among those who voted to complicate this problem, because we are going to be asked that question.

Mr. WAGGONNER. Mr. Speaker, it is economic folly, pure foolishness for this Congress to establish the precedent of writing a price [Sec.

110] for anything into a piece of legislation that will remain law until the law expires or is repealed. It is stupidity to allow and worse to mandate the sale of a depletable reserve at less than the replacement value. If you establish the price of an item now in this way tell us please how you will resist doing the same in the future when pressure builds. What about meat, wheat, or milk?

There was no emergency need for this bill in December and there is none now. Authority already exists to do everything this bill provides. It is sure to be vetoed.

The answer is, if you believe in the free market system, to let that system work. The windfall tax would be far more advisable. Consider only the failure of controls in recent months.

But why single out oil? Vepco says they were paying $16.73 a ton for coal a year ago and now they are paying $31.77. Why not roll that price back? Sure, the price of propane must be reduced, but we do not need a new law.

It has been said that prices should be rolled back because Exxon profits increased 59 percent last year. Hold your hats now, but did you know that the Washington Post which owns Newsweek had an increase in profits of 249 percent in 1973? They did, but you will never see that in print unless it is hidden in the want ads. They do not have the nerve to print it and never where it will be read. Oh no, they are too busy criticizing Congress for considering a 7½-percent pay raise after 5 years. Should the Post be nationalized for making too much money? Of course not, but the principle is the same.

Use some commonsense and let the free market work. Prices will adjust as supply meets demand, it always does.

Mr. ALEXANDER. Mr. Speaker, those of us from the rural States such as Arkansas know of a loophole in the COLC regulations that permitted a 350-percent increase in the price of propane over the last 12 months. **Section 110,** providing for a rollback of prices and attempts to address this injustice and provide relief for the citizens who have suffered from this hardship.

Mr. Speaker, this section provides for a proportional passthrough of costs from the refinery to the consumer. I urge my colleagues to vote down the previous question so we can get some relief for the propane consumers of America.

Mr. BROYHILL of North Carolina. Mr. Speaker, the energy shortage we are facing is a complex problem and of course, when the Congress is called upon to deal with a crisis of this magnitude, there is going to be great divergence of opinion as to the best approach to take to deal with it.

There is much in this legislation that has some merit. I do not have the time in the 2 minutes to really go into it, but there are some legislative authorities that are needed in this legislation to positively deal with the energy shortage. For example, there are amendments to the Clean Air Act contained in this bill. We provide for temporary relaxation of automobile emissions standards. [**Sec. 119 CAA.**] There are other authorities in here which we need, but of course all the controversy, and I recognize there is controversy, is coming on **section 110** of the bill.

Of course, there are many approaches suggested to deal with this problem of how we price petroleum products to make them available.

The approach that is supported by the conferees, and I was a member of the conference committee, to provide the consumer with the pricing protection in the petroleum market, is the most controversial feature of the conference report.

Here is the parliamentary situation:

PARLIAMENTARY SITUATION ON THE CONFERENCE REPORT ON S. 2589, THE ENERGY EMERGENCY ACT

The Conference Report on the Energy Emergency Act is subject to points of order because of certain rewriting which was done in Conference. The managers on the part of the House asked the Rules Committee for a rule which would waive points of order. However, the Rules Committee has granted a rule which waives points of order for all sections except Section 105 (granting FEO authority to promulgate energy conservation plans) and Section 110 (the price rollback section). Also under the rule, a separate vote can be demanded on Section 104 (authorizing the President to impose rationing).

What this means is that if a point of order is made to the language of Section 105 or 110, it is believed that the Speaker would sustain a point of order on the grounds that the Conferees went beyond the scope of the Conference in the new language of these sections. If the point of order is sustained, the entire Conference Report falls.

Chairman Staggers will ask the House to vote down the previous question so that he can offer a substitute rule, waiving points of order and permitting an up or down vote on one or more of the above-named sections. He feels that he has the votes to sustain the Conference Committee action on these sections. However, in the event that any of these sections are voted down, that, too, has the effect of killing the Conference Report.

If at any point, the Conference Report is rejected either by vote or point of order or any other parliamentary means, the Chairman can at that time move that the House ask the Senate for a new conference. However, if the Conference Report goes to final passage and is sustained by the House, the President has stated that he will veto the bill. If this occurs, the general feeling is that there are sufficient votes to sustain the veto. This means that all action on the bill would have to start over again at the committee level.

Mr. Speaker, all that we are asking Members to do is to vote down the previous question, as suggested by the chairman of the Committee on Interstate and Foreign Commerce, Mr. Staggers. This will give this House an opportunity to vote on these issues and not have the conference report to fall just on a point of order. If we adopt this substitute rule suggested by the chairman, then the House could work its will. If the conference report is to fall, let it be by a vote and not by a parliamentary means, such as a point of order.

Mr. ANDERSON of Illinois. I want to reply to the argument made by the gentleman from Arkansas (Mr. Alexander). I sympthize with the gentleman on high price of propane and the necessity of doing something about the 300-percent increase that has taken place.

We do not have to adopt this conference report, we do not have to vote down the previous question to get at this particular problem.

Mr. HASTINGS. Mr. Speaker, I intend to vote against the previous question. I think it is perfectly reasonable that the House should have an opportunity to vote separately on the three sections we have been made aware of.

I am a free enterpriser. I do not philosophically believe in rollbacks, but I hear people tell me we ought to have the oil depletion allowances changed, the excess profit taxes imposed, the foreign royalties for oil companies revised, and have antitrust action on vertical integration of major oil companies.

I predict if we do not do something, the only thing now available is a rollback [Sec. 110], a year from now, we will still be here talking about actions that this Congress will not take.

The Senate, as far as excess profits, is not willing to discuss the issue; so though I do not believe philosophically in rollbacks, I feel we should proceed here; since I do not believe any other action will be taken.

As far as the stripper wells are concerned, western New York happens to have a few stripper wells. Our oil is higher in price than the average price in this country. They were getting $4.60 a barrel a year ago in November. Today they get $10.35. This bill will allow them to go to $9.20 a barrel and they tell me privately they will get in new production at $7.50 or $8 a barrel.

I intend to vote against the previous question.

Mr. O'NEILL. Mr. Speaker, the debate today reminds me of the American public in 1946, when the signs read, "Like a little meat? Vote Republican." Or, "Had enough?"

Well, the technical argument of the gentleman from Illinois was really brilliant. No question he is an able man and gave a brilliant argument; but the people will say, "Where is the gas and where is the oil?"

That is the only issue. "Where is the gas and where is the oil?" That is what the people want to know.

Now, let us review what is going to happen here this afternoon. The gentleman from Florida will move the previous question.

Mr. Staggers, myself, and so many of us, have asked that the previous question be voted down, so that Mr. Staggers can then offer a rule to allow 435 Members to work their will on the three controversial and explosive provisions of the bill: No. 1, a price rollback [Sec. 110]; No. 2, energy conservation plans [Sec. 105]; and No. 3, rationing authority. [Sec. 104.]

Now, if this substitute rule is adopted, there will be 2 hours of general debate on these three crucial provisions. Following the debate there will be a vote on each one of those matters separately.

Now, that is the situation as it is. I say that it is just a replica of 1946 when people were saying, "Yes, there were technical arguments and there were great debates."

As a matter of fact, we have been deliberating over this legislation for more than 4 months now. Are we going to let all this work go down the drain by allowing one person to object to a provision and thus kill the whole conference report? Are we going to have one-man rule in the House or are we going to let the 435 duly elected Members of the House, who represent 200 million Americans, work their will on emergency energy legislation?

The American people are crying out to be heard on energy. The gas lines are getting longer and longer in California, Minnesota, Florida, and Massachusetts. The energy crunch is not a regional anxiety; it is a national problem and needs a nationally directed policy to resolve the problem.

But the American people deserve to be heard. And the only way this can happen is to vote down the previous question.

The American people want to know the accurate status of our oil and gas supplies. No one in the administration or Congress will be

able to give them a straight answer unless we adopt this conference report which forces the administration and oil companies to periodically report to Congress on our oil supplies. [Sec. 124.]

If we have an energy problem, if it is indeed a crisis or if, as the President says, we have weathered the storm, then the American people have a right to know. That is why we have an obligation to the American people to vote on the emergency energy legislation before us today.

Mr. Speaker, this is the crux of the issue. The only people who do not want us to vote on rationing and rollback [Secs. 104, 110], are the oil oligarchists of this Nation. But we all know, if it were not for their actions, we would not have this energy crisis. And the American people are not deceived. The oil companies are the most unpopular group in this country today.

I understand there have been 672 days of hearings on the energy crisis by this Congress; nevertheless we cannot go back to our constituents and say that we debated it for 4 months or that we had 672 days of hearings. They are going to say to us, "But where is the gas and where is the oil?"

To be true to the American public, the only way to go on this issue today is by voting on each one of these issues independently. Let our American public, let our people back home know how we feel on these questions.

There is a crisis, there is no question about it. This is one of the biggest issues we as Congressmen are going to face in our years here in the House of Representatives.

Mr. Speaker. I hope the previous question is defeated.

Mr. STAGGERS. Mr. Speaker, this is not a perfect bill, I admit that, and anyone would have to admit that. Nothing man has made has ever been perfect. If there are mistakes made in the bill, they can be corrected, but if we do not pass something, we cannot correct it.

Mr. Speaker, I think it is the most important bill any of us are going to vote on in our entire time in the Congress. I think the American people are going to do just exactly what the distinguished majority leader says. They are going to ask, "What did you do and how did you vote when the crisis was on?"

That is what they did in 1946, I can say that, when there was a lot of debate and no action.

This is only a temporary bill, did the Members know that? It is to get through this crisis now. One would think that this was an eternity, but it is only until May 15, 1975. Then, if we get through the crisis, everything will be gone and we can do something else.

Do the Members want to do away with the long lines around Washington? Did the Members see the headlines stating that there is no gas around the area? I think this bill will help to do that. Do the Members want to know what the supplies are in America of oil and gas? Do they want the people to know? If they do, then they will vote down the previous question and vote for the bill.

That is the only way we are going to find out. Are the Members going to go back home to their people and tell them that they do not want to know how much gas is here, where it comes from, how much is being spent for it? We will know if the previous question is voted down. They will make a report within 60 days.

This is a crucial bill for the people of America, for the little people, the poor people; not for the rich. A lot of people say, "Let the prices go, let the rich get richer and let the poor pay for it."

I say, let us protect the poor people. Nine months ago, oil was selling in America for $3.86 a barrel for all oil, old and new oil. In 9 months, new crude production has gone to $10, and over in some cases.

In Canada, a person can get all the gas that he wishes, and they have a gas war. This morning on the news, they are vying for prices and trying to sell gas. Yet, they want to sell us oil at a high price, because our prices have gone up and they say, "We are not going to undersell you."

That is the reason we want to roll these prices back to where they are reasonable. **[Sec. 110.]**

By the petroleum industry's own figures in December 1972, they said:

> Projecting ahead, give us $4.03 a barrel in 1974, and we can make 20 percent profit; if you give us $3.92 a barrel, we will make 10 percent profit.

We are not saying that. We are saying that flowing oil may stay at $5.25 a barrel and up to $7.09 a barrel may be charged for the stripper wells.

Mr. Speaker, I have just been told today, a few moments ago, by a man who knows his business and is in this business, that 50 percent of these stripper wells are owned by the big oil companies. We are saying that they can go to $7.09.

Now, if the Members want to help their farmers, bringing down the price of propane which is selling at three times the price is the way to do it. If not, they can go back home to the glassmakers, the business people, the farmers, and tell them they were not willing to bring down the price of propane—just vote this previous question in.

But if a Member votes down the previous question and votes for this bill, he can say, "I voted to bring down the price of propane, which has gone up over 300 percent." But otherwise I do not know how the Members can explain to the farmers and the little business people and the plastics people and all the rest of them in America that they were down here trying to help them. They could not say that.

America is willing to sacrifice. The people are willing to pay any price and do anything if they think it is right. But I cannot go back into my hills and tell one out of a hundred that there is a shortage in America and have them believe it. I have had meetings with them in courthouses, and I know they do not believe that there is a shortage in America. We have to get the reports to show them. Nobody knows. This will let them know.

Mr. Speaker, let me just say this: It just comes down to one simple question. Do the Members want to let one man get up and say that this bill should not pass, or do the Members want to let the people of America vote on it, let the elected Representatives of the people in America vote on it?

Is this not a democracy? Should we not allow everybody in America who has a voice to speak?

This is all we are asking for in the committee, that all the Members in this House will have a chance to express their vote on the three most important issues. We are not saying that we should vote this thing

up or down. We are not saying that at all. We are saying, let us give the House a chance.

So the object is to vote down the previous question, and I will ask that the three issues have a vote taken on each one of them.

Mr. GONZALEZ. Mr. Speaker, I take this opportunity to say that I am once again dismayed to see that we are repeating the experience of December 20, when we flailed and floundered around with this energy legislation.

This legislation is superfluous; it is redundant. We have already passed on all the authority that is necessary to the President to do what they intend to do under this bill. The only thing we are going to get here is "legislative constipation."

Mr. PEPPER. Mr. Speaker, I move the previous question on the resolution.

The SPEAKER. The question is on ordering the previous question.

RECORDED VOTE

Mr. PEPPER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 144, noes 259, answered "present" 3, not voting 25, as follows:

[Roll No. 45]

AYES—144

Anderson, Ill.	Dellenback	Jones, Okla.
Archer	Dennis	Jordan
Arends	Derwinski	Kazen
Armstrong	Devine	Kemp
Ashbrook	Eckhardt	Ketchum
Bauman	Edwards, Ala.	Landegrebe
Beard	Erlenborn	Latta
Blackburn	Esch	Long, La.
Boggs	Findley	Lott
Bray	Fisher	Lujan
Breaux	Forsythe	McCloskey
Brooks	Frey	McEwen
Brotzman	Goldwater	McSpadden
Brown, Ohio	Gonzalez	Mahon
Broyhill, Va.	Goodling	Mailliard
Buchanan	Green, Oreg.	Martin, Nebr.
Burgener	Gross	Martin, N.C.
Burke, Fla.	Gubser	Mathias, Calif.
Burleson, Tex.	Guyer	Milford
Butler	Hammerschmidt	Miller
Camp	Hansen, Idaho	Minshall, Ohio
Casey, Tex.	Hébert	Montgomery
Cederberg	Hinshaw	Moorhead, Calif.
Chamberlain	Hogan	Mosher
Clawson, Del.	Holt	Myers
Cochran	Horton	Nelsen
Collier	Hosmer	O'Brien
Collins, Tex.	Huber	Parris
Conable	Hutchinson	Passman
Conlan	Ichord	Pepper
Daniel, Dan	Jarman	Pettis
Daniel, Robert W., Jr.	Johnson, Colo.	Pickle
de la Garza	Johnson, Pa.	Poage

Quie	Skubitz	Wampler
Quillen	Smith, N.Y.	White
Rarick	Spence	Whitehurst
Regula	Steed	Wiggins
Rhodes	Steelman	Wilson, Bob
Robinson, Va.	Steiger, Ariz.	Wilson, Charles, Tex.
Rose	Symms	Winn
Rousselot	Talcott	Wright
Runnels	Taylor, Mo.	Wyatt
Ruth	Thornton	Wylie
Satterfield	Towell, Nev.	Young, Alaska
Scherle	Treen	Young, Ill.
Sebelius	Vander Jagt	Young, S.C.
Shoup	Veysey	Young, Tex.
Shriver	Waggonner	Zion

NOES—259

Abdnor	Cotter	Gude
Abzug	Coughlin	Gunter
Adams	Cronin	Haley
Addabbo	Culver	Hamilton
Alexander	Daniels, Dominick V.	Hanley
Anderson, Calif	Danielson	Hanna
Andrews, N.C.	Davis, Ga.	Hanrahan
Andrews, N. Dak.	Davis, S.C.	Hansen, Wash.
Annunzio	Delaney	Harrington
Ashley	Dellums	Harsha
Aspin	Denholm	Hastings
Badillo	Dent	Hawkins
Bafalis	Dickinson	Hays
Barrett	Diggs	Hechler, W. Va.
Bennett	Dingell	Heckler, Mass.
Bergland	Donohue	Heinz
Bevill	Downing	Helstoski
Biaggi	Drinan	Henderson
Biester	Dulski	Hicks
Bingham	Duncan	Hillis
Blatnik	du Pont	Holifield
Boland	Edwards, Calif.	Holtzman
Bolling	Eilberg	Howard
Bowen	Eshleman	Hudnut
Brademas	Evans, Colo.	Hungate
Breckinridge	Evins, Tenn.	Hunt
Brinkley	Fascell	Johnson, Calif.
Broomfield	Fish	Jones, Ala.
Brown, Calif.	Flood	Jones, N.C.
Brown, Mich.	Flowers	Karth
Broyhill, N.C.	Flynt	Kastenmeier
Burke, Calif.	Foley	King
Burke, Mass.	Fountain	Koch
Burlison, Mo.	Fraser	Kyros
Byron	Frenzel	Landrum
Carey, N.Y.	Froehlick	Leggett
Carter	Fulton	Lehman
Chappell	Fuqua	Lent
Chisholm	Gaydos	Litton
Clancy	Gettys	Long, Md.
Clark	Giaimo	McCollister
Clausen, Don H.	Gibbons	McCormack
Clay	Gilman	McDade
Cleveland	Ginn	McFall
Cohen	Grasso	McKay
Collins, Ill.	Gray	McKinney
Conte	Green, Pa.	Macdonald
Conyers	Griffiths	Madden
Corman	Grover	Madigan

Mallary	Pritchard	Stark
Mann	Railsback	Steele
Maraziti	Randall	Steiger, Wis.
Mathis, Ga.	Rangel	Stephens
Matsunaga	Rees	Stokes
Mayne	Reid	Stratton
Mazzoli	Reuss	Stubblefield
Meeds	Riegle	Stuckey
Melcher	Rinaldo	Studds
Metcalfe	Robinson, N.Y.	Symington
Mezvinsky	Rodino	Taylor, N.C.
Minish	Roe	Thompson, N.J.
Mink	Rogers	Thomson, Wis.
Mitchell, Md.	Roncalio, Wyo.	Thone
Mitchell, N.Y.	Roncallo, N.Y.	Tiernan
Mizell	Rooney, Pa.	Udall
Moakley	Rosenthal	Ullman
Mollohan	Roush	Van Deerlin
Moorhead, Pa.	Roy	Vanik
Morgan	Roybal	Vigorito
Murphy, Ill.	Ruppe	Waldie
Murtha	Ryan	Walsh
Natcher	St Germain	Whalen
Nedzi	Sandman	Whitten
Nichols	Sarasin	Widnall
Nix	Sarbanes	Williams
O'Hara	Schroeder	Wilson, Charles H., Calif.
O'Neill	Seiberling	Wolff
Obey	Shipley	Wydler
Owens	Shuster	Wyman
Patman	Sikes	Yates
Patten	Sisk	Yatron
Perkins	Slack	Young, Fla.
Peyser	Smith, Iowa	Young, Ga.
Pike	Snyder	Zablocki
Podell	Staggers	Zwach
Preyer	Stanton, J. William	
Price, Ill.	Stanton, James V.	

ANSWERED "PRESENT"—3

Bell	Schneebeli	Ware

NOT VOTING—25

Baker	Jones, Tenn.	Price, Tex.
Brasco	Kluczynski	Roberts
Burton	Kuykendall	Rooney, N.Y.
Carney, Ohio	McClory	Rostenkowski
Crane	Michel	Sullivan
Davis, Wis.	Mills	Teague
Dorn	Moss	Vander Veen
Ford	Murphy, N.Y.	
Frelinghuysen	Powell, Ohio	

So the previous question was not ordered.
The Clerk announced the following pairs:
On this vote:

Mr. Teague for, with Mr. Rostenkowski against.
Mr. Roberts for, with Mr. Frelinghuysen against.
Mr. Price of Texas for, with Mr. Kluczynski against.
Mr. Kuykendall for, with Mr. Rooney of New York against.
Mr. Crane for, with Mr. Murphy of New York against.
Mr. Baker for, with Mr. Brasco against.
Mr. Michael for, with Mr. Moss against.

Until further notice:

Mr. Burton with Mr. McClory.
Mr. Dorn with Mr. Davis of Wisconsin.
Mr. Jones of Tennessee with Mr. Carney of Ohio.
Mr. Ford with Mr. Powell of Ohio.
Mrs. Sullivan with Mr. Mills.

The result of the vote was announced as above recorded.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. STAGGERS

Mr. STAGGERS. Mr. Speaker, I offer an amendment in the nature of a substitute.

The clerk read as follows:

Amendment in the nature of a substitute offered by Mr. STAGGERS: Strike out all after the resolving clause of House Resolution 901 and insert in lieu thereof the following:

"That immediately upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes, and all points of order against said conference report for failure to comply with the provisions of clause 3, Rule XXVIII, are hereby waived. Debate on said conference report shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce. At the conclusion of the debate, it shall be in order, on the demand of any Member for a separate vote to be had on motions to strike out the following provisions of the conference report: **Sections 110, 105, and 104,** and such separate votes, if demanded, shall be taken in the foregoing order. At the conclusion of all of the separate votes demanded under this procedure, and if none of the sections have been stricken by such separate votes, the previous question shall be considered as ordered on agreeing to the conference report."

The SPEAKER. The gentleman from West Virginia is recognized for 1 hour.

Mr. STAGGERS. Mr. Speaker, at the outset I want to say I am very grateful for the vote that just took place a minute ago because I think it is to the great interest of America. I think the Members of this House recognize every Member should have an opportunity to vote on the different issues. This is democracy in action.

I am grateful and I know every American is, whether we win or lose on the matter before us. I am hopeful every section of the bill will be voted up because at the start of this bill when it was brought to the House floor, in December, it was debated for a long time and into the wee hours of the night. Afterward we went to conference and worked on the bill again. It was taken up by the Senate and passed, after long and full debate, by a two-thirds majority, 67 to 32.

The vote of the House just now showed me the Members want some kind of bill to take back home. They do not want their people to say this House is not capable of legislating for this land in order to try to help our people.

No one says this is a perfect bill.

I say it ought to be voted up or down and we should give everybody a chance to vote on the bill, so I am willing to vote on it right now. I ask, Mr. Speaker, that we have a vote on this, unless the gentleman from Illinois wants me to yield some time.

Mr. ANDERSON of Illinois. Mr. Speaker, if the gentleman from West Virginia will yield, I shall not ask for any extended amount of time, because I think that this amendment in the nature of a substitute for the resolution offered by the Committee on Rules has been thoroughly explained and debated during the hour allowed that has just taken place.

I cannot help but express some regret that I think we have established an unfortunate precedent and, in effect, I think we have stricken clause 3 of rule XXVIII from the rule book, as far as the future is concerned. It seems to me that may be the tendency from now on, but I think the Members understand the issue that is now before them.

Mr. STAGGERS. Mr. Speaker, I thank the gentleman from Illinois for his comments. I am certain he is very sincere.

Mr. Speaker, I move the previous question on the amendment and on the resolution.

The SPEAKER. The question is on ordering the previous question.

The previous question was ordered.

The SPEAKER. The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER. Under the provisions of the resolution just adopted, the conference report is now before the House, and that resolution provides that it shall be in order following the completion of debate on the adoption of the conference report for separate votes to be demanded on **sections 110, 105, and 104** of the report.

Is a separate vote demanded on any of the sections?

Mr. LATTA. Mr. Speaker, I ask for a separate vote on **section 104.**

The SPEAKER. The gentleman from Ohio asks for a separate vote on **section 104.**

Is a separate vote demanded on any of the other sections?

Mr. ECKHARDT. Mr. Speaker, I ask for a separate vote on **section 105.**

The SPEAKER. The gentleman from Texas asks for a separate vote on **section 105.**

Mr. ANDERSON of Illinois. Mr. Speaker, I ask for a separate vote on **section 110.**

The SPEAKER. The gentleman from Illinois asks for a separate vote on **section 110.**

The Chair will now put the question on these sections in the order specified in the resolution.

PARLIAMENTARY INQUIRIES

Mr. ECKHARDT. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. ECKHARDT. Mr. Speaker, does the gentleman from Texas misunderstand the rule in that it provided for a motion to strike each of these sections? The gentleman from Texas had thought there would be some debate with respect to these sections.

The SPEAKER. The Chair will advise that under the rule as amended 1 hour of debate is now permitted on the conference report itself.

The gentleman from West Virginia is recognized for 30 minutes and the gentleman from North Carolina is recognized for 30 minutes.

Prior to the debate, may the Chair announce that the sections will be voted on in the following order: **Section 110, section 105,** and **section 104.**

The Chair now recognizes the gentleman from West Virginia for 30 minutes.

Mr. BROYHILL of North Carolina. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. BROYHILL of North Carolina. Mr. Speaker, I was under the impression that 40 minutes of debate would be in order on each one of the sections, in addition to the 1 hour.

The SPEAKER. The rule provides 1 hour of debate now under the control of the gentleman from West Virginia and the gentleman from North Carolina.

Mr. RHODES. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. RHODES. Mr. Speaker, at what stage of the proceedings does a motion to strike become in order?

The SPEAKER. Immediately after the 1 hour of debate on the conference report.

The Chair recognizes the gentleman from West Virginia (Mr. Staggers) for 30 minutes.

Mr. STAGGERS. Mr. Speaker, I shall make my statement very brief.

Mr. Speaker, I rise in support of the conference report on the Emergency Energy Act (S. 2589).

Mr. Speaker, there is much in this legislation which is needed now if we, as a Government, are to respond positively to the energy crisis. Standby authority is provided to permit end-use rationing **[Sec. 104]** of petroleum products should the President determine that he is unable otherwise to preserve public health, safety, and welfare of this Nation. Authority has been given to the President to compel the allocation of materials **[Sec. 107]** for energy production which are in short supply such as pipes and drill bits to prevent the hoarding of these supplies which is reportedly now going on.

The administration is given authority, tempered by congressional veto, to prevent wasteful and unnecessary energy consumption. **[Sec. 105.]** The consumer is provided with pricing protection in the petroleum market. **[Sec. 110.]** Steps are authorized to be taken to begin to make fuller and more efficient use of this Nation's abundant coal supplies. **[Sec. 106.]** And the States are to be granted assistance in providing compensation for those whose unemployment is attributable to energy shortages. **[Sec. 116.]** And perhaps most importantly, provision has been made to obtain complete and accurate data reflecting this Nation's energy supply so that both the administration and this Congress can measure the extent of the problem and fashion additional means to deal with it. **[Sec. 124.]**

I know this legislation is extremely complex and controversial. To assist the Members in their consideration of its terms, I have instructed the staff of the committee to prepare a summary of the major provisions of this bill. This summary is available on the floor for your reference.

I wish to emphasize that this bill contemplates temporary measures to extend only for the next 14 months until May 15, 1975. As we gain further experience and acquire additional information, amendments in its provisions may become necessary. But we cannot and should not defer action awaiting a more perfect solution to our problems. I respectfully urge your support of this current legislative effort.

Mr. GROSS. Mr. Speaker, is there any pullback provision on rationing that gives Congress the power to intervene to stop rationing at any time, or is this power delegated to the President without limitation?

Mr. STAGGERS. No; the bill runs out in 14 months. It is a temporary bill.

Mr. GROSS. Well, the rationing could go on for 14 months or longer, but would have to be extended by Congress. Is that what the gentleman is saying?

Mr. STAGGERS. No; I am saying that the President is prohibited from any kind of rationing until he has exhausted every means at his command, and then only after hearings and judicial review.

Mr. GROSS. But there is no pullback provision in **section 104**, no pullback on the part of the Congress?

Mr. STAGGERS. No. But, we do stop him from rationing now, which he can do now. We say he cannot do it until he has exhausted every other means at his command, and after hearings and after judicial review.

Mr. SKUBITZ. Mr. Speaker, what the gentleman is saying is that this is an antirationing bill?

Mr. STAGGERS. No; I do not say that at all.

Mr. KAZEN. Mr. Speaker, what does the gentleman mean by "judicial review"? Does he mean that there will be judicial review by the Courts? **[Sec. 118.]**

Mr. STAGGERS. Mr. Speaker, I believe I am right on that.

Mr. MACDONALD. Mr. Speaker, I appreciate the gentleman yielding to me.

Mr. Speaker, it is up to the President to make a decision on whether or not he will ration. If so, he will then issue appropriate regulations.

Mr. KAZEN. Then it is not mandatory that we have judicial review, if what the gentleman is saying is correct.

Mr. MACDONALD. Mr. Speaker, the deep-seated trouble is that many people, many lawyers both in the White House and outside the White House, say that he already has the power. He himself has said that he does not have the power, and this bill will give him the power under certain condtions. **[Sec. 104.]**

Mr. KAZEN. It will give him power to do what, to go to the courts and get judicial review?

Mr. MACDONALD. To impose rationing subject to review by the courts.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Iowa.

Mr. GROSS. Mr. Speaker, must the President declare an emergency either before or after the fact of rationing?

Mr. MACDONALD. Mr. Speaker, if the gentleman will yield to allow me to answer the question, technically the emergency is still on. It goes back to 1933 or some such date. There is still a declared state of emergency. It has never been declared that the state of emergency is over.

Mr. GROSS. So the state of war emergency with respect to rationing gasoline and other fuels has never been declared to have come to an end?

Mr. MACDONALD. No. The President has retained his power as President. He has emergency powers that the Congress has never lifted.

Mr. STAGGERS. Mr. Speaker, I know that my people at home are demanding that something be done now and they are looking to the Congress of the United States to do it. We in Congress are the ones they are blaming. One can say that they are blaming the President, but I do not believe that; I believe they are blaming the Congress.

So something must be done, and now is the time to do it, and now is the time for the Congress to act positively.

Mr. MILFORD. Mr. Speaker, I respect the gentleman, the Chairman of the Committee, although I must say that I disagree with him.

Mr. Speaker, what I am about to say will probably be just about as popular as a skunk at a dinner dance. Nonetheless, I feel that it is imperative that it be said.

A rollback in domestic crude oil prices would be an absolute disaster to this Nation. [Sec. 110.]

Mr. Speaker, I know that many of you do not like to hear Texans talking about the oil business. Some of you even believe that the powerful oil lobbies own the Texas Members, and that our delegation is simply used as a tool by them. I can assure you that is untrue.

If any rational person will stop and learn some very basic facts about the production of oil and then do some unprejudiced thinking, you will quickly see the fallacy of some of the arguments presented on this floor.

The most important fact that you must learn about oil production is that the cost of getting a barrel of crude out of the ground is different for every situation, for every field, and for every well within a field.

For example, if we have a new discovery where the reservoir pressure is high, the oil may flow to the surface without pumping. The cost of that crude recovery is very low. As more wells are developed and more oil is taken out of the reservoir, the pressure is lowered, and the producer must begin to pump the crude to the surface. His production cost goes up. In the latter stages of the oil field's history, the reservoir pressure is depleted, and the well becomes a stripper.

I think that it is very important for us to pause a moment and be sure that every Member fully understands the definition of a stripper oil well. This is extremely important because strippers contribute a significant amount to our overall energy supply.

In the oil business, a well is classified as a stripper when it produces less than 10 barrels of oil per day. The cost of bringing this oil to the surface is very expensive.

There are two other very important facts that every Member should know about stripper oil wells. First, they produce 11.9 percent of our total domestic oil. Second, they are not owned by the big oil companies. They are owned by independent producers—small producers—small businessmen.

The big oil companies will not fool with strippers. They are a headache—they require too much maintenance—they require too much bookkeeping, and therefore, they are not profitable to large operations.

If you roll back the prices of domestic crude [Sec. 110], you will shut down stripper oil well operations over the Nation. The small in-

dependent operators simply cannot operate at a loss. If it costs them $6 per barrel to produce from a stripper well, and you place a price ceiling of $5.25 on crude, they will simply shut down their wells. They have no choice. You will have done nothing to the big oil companies—they do not operate stripper wells. But, you will have reduced overall crude supplies.

Now, the stripper well is not the end of the line in oil production. It is simply one of the most expensive production wells.

Once we believed the stripped well to be the end of the line in oil production. Most folks thought that the well would soon be dead when it reached the stripper stage. Some oil fields were even closed down with the wells capped.

Now we know that this is not the case. When we have pumped a field until no new oil can be brought to the surface, we have actually recovered only approximately 30 percent of the oil that is in the reservoir beneath. The rest is still there, waiting to be brought to the surface and into the gas tanks of your constituents.

New techniques have been developed to get the remaining oil out of the ground. They are called secondary recovery and tertiary recovery. We have techniques of rebuilding the underground reservoir pressure and forcing the crude oil from the sands underneath.

But, these are expensive techniques. They require large capital investments, and the cost of getting the crude to the surface is high. Believe me, my colleagues, you will never see a drop of that oil with a ceiling price of $5.25 per barrel. The operators simply cannot get it to the surface at that price.

On the other hand, if the independent operators are allowed to develop this potential, it will mean an effective increase in domestic crude oil production. While the cost of that production will be higher than we are accustomed to paying for domestic crude, it will still be much lower than the $15 to $20 per barrel that we are now having to pay for foreign crude.

I plead with my colleagues to recognize a fact of life. If you place a ceiling price on crude oil production [Sec. 110], you immediately stop all marginal productions that cost more than ceiling price. This can only aggravate our shortage and force us to purchase higher priced foreign oil. This simply does not make sense.

Mr. Speaker, I would like to make another point about which many of my colleagues grossly misunderstand. I am in agreement with every person in this House when it comes to preventing oil companies, or any kind of company, from exploiting the public during this energy shortage. I am not here today to defend the big oil companies, and I am certainly not here to defend exploitation of the public.

The point I would like to make is that by rolling back crude oil prices, you do not really affect the big oil companies. What you will do is blow the little independent operator out of the tub. Big oil companies do very little oil exploration.

To solve our energy shortage, we must find more oil and recover more from the fields. Exploration is our real answer. Exploration is done by the small independent producers. The big companies do exploration only in the expensive offshore reserves, or the Alaskan reserves, or other indicated reserves requiring large capital invest-

ments. The Christopher Columbuses of the oil industry are the independent oil operators. These are little guys.

They are investors that are simply looking for the best return on their capital investments. If they do not get it in oil, they will invest in the stock market, or real estate, or peanuts in Peru.

The moment you place a ceiling on their potential return that will lower the return below other investment potentials, you have stopped oil exploration. Without new oil exploration, we cannot meet the increased demands of our constituents.

Mr. Speaker, I want to make one final point—a very important point. Every Member of this House is concerned about the prices his constituents are having to pay for fuel. Please believe me, the people in Texas do not like to pay high prices any more than the people in Massachusetts, New York, or Wisconsin.

Big oil companies and big oil profits are no more popular in Texas than they are in New Jersey. I also have to face my constituents, just as you do, every 2 years.

I am just as anxious as any other Member from any other State to prevent exploitation of consumers due to a shortage. I am equally anxious to see that my constituents receive fuel to keep their homes warm and to provide for business operations.

A price rollback is not the answer. **[Sec. 110.]** That will not stop big oil company profits; it will only stop oil exploration and limit oil production. You will not be doing your constituents a favor—you will be hurting them.

If you want to stop excess profits, as I do, the answer does not lie in price ceilings. The answer lies in levying an excess profits tax. Our own Ways and Means Committee is now working on such a plan. That makes sense. It will limit profits, but will not limit production.

An excess profits tax will allow independent producers to place capital back into the exploration for new oil. It will allow stripper well production to continue. It will allow producers to reclaim old oil fields and regenerate production through secondary recovery and tertiary recovery techniques. This generates increased fuel supplies and eases the shortage.

Surely the Members of this House have not forgotten the great meat price rollback that we enacted just 1 year ago. We learned that we could, indeed, pass a law to freeze meat prices. We also learned that such action immediately created a shortage.

Any way you look at it, my Colleagues, you cannot make a man operate his business at a loss. It will not work with cattle growers. It will not work with oil men.

I urge each of you to reject this conference report, and vote down the rollback and ceiling price on new crude oil. **[Sec. 110.]** Otherwise you will surely bring about further shortages and force this Nation into rationing.

Mr. WAGGONNER. Mr. Speaker, will the gentleman answer this one question for me:

Will the gentleman tell me what there is in this bill that produces one more barrel of energy?

Mr. STAGGERS. Well, we have a conservation section in the bill **[Sec. 105]**, and we let loose a lot of materials that are now tied up, ma-

terials that will be distributed equally so there can be other things done. [Sec. 107.]

Mr. ROGERS. Mr. Speaker, if the gentleman will permit me, I would just like to say to the gentleman that I think the most important provision in this bill, as far as every American I have talked to is concerned—and I will bet that if the gentleman has talked to people in his home district, it is true there—the most important feature in this bill is the provision to give the Federal Energy Office the right to require every producer of oil and gas in this country to give them a proper inventory, saying what is in the ground in their wells, what is stored and where it is stored, what is refined and where it is going, so that we will know. There is no current authority in law to require this. [Sec. 124.]

That is going to bring us more oil than any of us can conceive, because we are going to find out exactly what we do have, and the Energy Office then can make intelligent judgments on what must be done.

And I predict that we are going to find out there are a lot of wells tapped that only have about 20 percent or 30 percent taken out of them.

We are going to find out that there is some inventory stored up that nobody knows about now. The gentleman is going to be surprised, and he will just find out a lot of things as soon as we pass this bill. We ought to give them this authority right away.

I know the gentleman is sincerely concerned about the rollback provision [Sec. 110], but that shows that it is a little strict, and we can handle that later if we need to. That can be done.

Mr. Speaker, we had better move on and get something done and cut down these gas lines and find out what we have in this Nation and allocate it properly.

Mr. PRITCHARD. Mr. Speaker, I would like to make it very clear in my mind as to the issue of rationing.

The gentleman said: "As I understand it, it will really impede the President from putting in rationing."

Is that what the gentleman said?

Mr. STAGGERS. I said the President must exhaust all his means before he puts in rationing.

Mr. PRITCHARD. If you will allow me to go on, one of the things the gentleman said further was that the public was clamoring for action, and I think they are demanding rationing and they want it now. I am a little surprised that we are bringing forth a bill now that will make it more difficult to put in rationing. [Sec. 104.]

Mr. STAGGERS. It will not make it more difficult. Let me say to the gentleman that if we put in rationing, you are also putting in billions of dollars in the way of rackets that we cannot stop in America. It will be just like prohibition and it will be just like the situation we had in 1946, and this Congress had to change it completely in 1948 because they were tired of rationing in America.

Mr. PRITCHARD. Then I think this bill makes it tougher to put in rationing.

Mr. BROYHILL of North Carolina. Mr. Speaker, as I pointed out a few moments ago, when we were considering the other rule, this is a

complex problem dealing with an energy shortage and we are being called upon to deal with it here.

Of course, there is a great deal of divergent opinion as to how best to approach this problem, but I do want to point out that there is much more in this legislation than is found in this one **section 110,** which is the pricing section.

For example, the Clean Air Act in this bill is amended to provide for some temporary relaxation of automobile emission standards in an attempt to conserve fuel. I wish the Members would study that section. **[Sec. 202 CAA.]**

In addition to that there is authority contained in this bill that would suspend certain stationary source emission standards. The purpose of this section is an effort to permit fuller and more efficient use of the Nation's very abundant coal supply. **[Sec. 119 CAA.]**

As the chairman pointed out, there is standby authority in this bill which provides for rationing of petroleum products. But, as the chairman pointed out, the President has to determine that such a program is necessary and all other practicable and authorized methods to limit energy demands will not achieve the objectives of the act. **[Sec. 104.]**

There is also increasing evidence that many aspects of the energy crisis cannot be rapidly corrected and that these problems may burden the Nation for some time. In light of this situation, and in response to it, in **section 105,** the administration is granted the very essential authority, subject to congressional veto, to issue regulations designed to prevent wasteful and unnecessary use of our energy resources, and to reduce energy consumption to a level which can be supplied by available energy resources. There are also other provisions in the bill designed to promote energy conservation such as authority to encourage the use of carpools and a requirement that all agencies of Government, where practical, make use of economy motor vehicles. **[Sec. 117.]**

It is well recognized that when a product is in great demand and short supply the price is going to increase correspondingly. When the product is essential to the Nation's economy and to its welfare, steps must be taken to assure that the price will not become prohibitive during the period of short supply. There were many approaches suggested to deal with this problem and none of those suggested were completely satisfactory to all the conferees. The approach adopted by the conferees to provide the consumer with pricing protection in the petroleum market is the most controversial feature of the conference report. The provisions of the bill dealing with this problem are contained in **section 110,** the so-called price rollback provisions. There have been strong attacks on this provision based on the theory that a price rollback will reduce capital available for exploration and production of new energy resources.

Others are equally strong in their opinion that the price limitation contained in **section 110** will provide more than adequate capital needed for the maximum exploration and production of new domestic energy resources. The problem is an extremely complex one and an informative statement in support of the provision can be found in Chairman Staggers' letter of February 25, 1974, which was sent to all Members of the House.

It is my sincere belief that on the whole this bill contains numerous authorities that are essential to deal with this Nation's energy crisis

and for this reason I ask for your support in passing this measure. I would like to emphasize that this bill provides only temporary authorities that extend for 14 months until May 15, 1975. As we acquire additional information we may find that amendments to this measure are necessary, but with the magnitude of the problem facing us today we cannot allow further delay by rejecting the good in pursuit of the perfect.

I want to point out—and this is very essential—that these energy conservation programs that would be promulated under **section 105** would be subject to congressional veto.

Mr. ECKHARDT. Is it not true until March 15 they are not subject to veto but, rather, go into effect without congressional action, but the Congress would have the authority in either House to in effect reverse them?

Mr. BROYHILL of North Carolina. That is true. But March 15 is almost upon us, and I doubt that the Federal Energy Office would even have that authority. So I want to point out that this matter, of course, has been debated up and down as to whether this authority should be granted. I want to point out further it is subject to congressional veto plus the fact that this is a temporary bill and is not permanent legislation.

It is temporary because the authority granted in the bill to promulgate regulations would expire on May 15, 1975. There are other provisions in this bill designed to promote energy conservation. I hope that the Members will have the opportunity, if they have not already done so, to study the conference report. All of the provisions are designed to try to promote energy conservation so as, hopefully, not to have to rely upon rationing.

Section 110, of course, is the controversial section. There have been many approaches suggested to deal with this problem of pricing of petroleum products, and of course none of those suggested were completely satisfactory to all of the conferees. There have been very strong attacks made upon this provision, but I would like to call to the attention of the Members a very informative and thoughtful statement that was circulated by the chairman of the full committee, the gentleman from West Virginia (Mr. Staggers), dated February 25, which goes into all aspects of this **section 110,** and all aspects of the pricing section. And I would hope that the Members, if they do not already have one, would get a copy of this, because I believe it is very complete and it is accurate.

In conclusion, Mr. Speaker, the conferees believe that on the whole this bill does contain numerous authorities that are essential to deal with this energy shortage, and that is the reason we are asking for the support of the Members in passing the measure.

I want to say again that this is temporary—I repeat that—temporary and that as we acquire additional knowledge and as we acquire additional information, that when we feel amendments to this measure are necessary that we can take them up, but with the magnitude of the problem facing us today we cannot allow further delay by rejecting the good in pursuit of perfection.

Mr. MCCOLLISTER. Mr. Speaker, I wish to associate myself with the remarks of the gentleman from North Carolina.

Mr. ICHORD. Mr. Speaker, I would say to the gentleman from North Carolina that perhaps I am a little old fashioned, but I still believe in the free enterprise system, a system based upon the law of supply and demand, price competition, and profit, and I still have not received an answer to the question of the gentleman from Louisiana.

There was a rather oblique answer, I would say, from the gentleman from Florida (Mr. Rogers). But if I may repeat the question: What is there in this bill to assure the production of 1 additional barrel of oil? That is the problem we face, the problem of a shortage of supply.

Mr. Speaker, I will ask the gentleman from Missouri if the gentleman is referring to one particular section of the bills?

Mr. ICHORD. To any section of the bill. I have not yet heard an answer to the question posed by the gentleman from Louisiana: What is there in the bill to cause the production of 1 additional barrel of oil?

Mr. BROYHILL of North Carolina. If the gentleman will permit me to respond, I am trying to point out that this is an energy conservation bill, as I see it. We need to take some steps right now in order to conserve energy, and certainly that will provide a considerable amount of petroleum products.

Mr. ICHORD. If the gentleman will yield further, then I take it that the committee anticipates further legislation to provide incentives for the production of additional supplies of petroleum products?

Mr. BROYHILL of North Carolina. I think that any tax incentives, or any legislation of that sort, will have to come from another committee of the House.

Mr. MACDONALD. Mr. Speaker, if the gentleman will yield, in answer to the inquiry of the gentleman from Missouri, and also the gentleman from Louisiana, I can point out that specifically in the bill we have tried to help the independent producers by giving the President authority to allocate the drilling machinery that is in such short supply for the independents. **[Sec. 107.]**

Mr. MACDONALD. Mr. Speaker, as I say, the President will have the authority to take drilling equipment from companies who may be accused of hoarding it, and we will stop the exportation of such equipment into the Middle East, and in that way the independents will have the equipment in order to drill, which they now find in such very short supply, so that they will be able to produce more oil. In that specific way we will be helping the independent.

Mr. ICHORD. Does the gentleman from Massachusetts feel that the price set for the production from stripper wells will be sufficient to bring additional production into being? I understand that a little greater than one-quarter of our total domestic oil production comes from stripper wells, and the gentleman has provided for a differential in price. Does he feel that this is high enough to increase production from stripper wells?

Mr. BROYHILL of North Carolina. The only thing we can do is to quote what the Independent Petroleum Council reported to Congress, that in order to achieve the greatest feasible level of domestic self-

sufficiency, the domestic price of crude oil would have to rise to $3.65 per barrel in 1975.

I insert at this point a joint statement prepared by me and Chairman Staggers:

JOINT STATEMENT

There is much in this legislation which is needed now if we as a government are to respond positively to the energy crisis. For example, standby authority is provided to permit end-use rationing of petroleum products should the President determine that he is unable otherwise to preserve public health, safety, and welfare of this nation. [Sec. 104.] Authority has been given to the President to compel the allocation of materials for energy production which are in short supply such as pipes and drill bits to prevent the hoarding of these supplies which is reportedly now going on. [Sec. 107.] The Administration is given authority—tempered by Congressional veto—to prevent wasteful and unnecessary energy consumption. [Sec. 105.] The consumer is provided with pricing protection in the petroleum market. [Sec. 110.] Steps are authorized to be taken to begin to make fuller and more efficient use of this nation's abundant coal supplies. [Sec. 106.] And the states are to be granted assistance in providing compensation for those whose unemployment is attributable to energy shortages. [Sec. 116.] And perhaps most importantly, provision has been made to obtain complete and accurate data reflecting this nation's energy supply so that both the Administration and this Congress can measure the extent of the problem and fashion additional means to deal with it. [Sec. 124.]

Most certainly this is a most complex and controversial bill. Objection to its terms is principally focused on section 110—the so-called price rollback provisions.

Let us take a moment to describe how these provisions will affect the current prices of domestically produced crude oil. As you undoubtedly know, the President has imposed ceiling prices for so-called "flowing oil" produced in the United States. The formula that he has employed for doing this is identical to that contained in section 110 of the Conference Substitute (i.e., producers are permitted to charge the field price in effect on May 1, 1973, plus an additional $1.35). Thus the pricing provisions of the Conference Substitute will not force a change in the current price levels for flowing crude production. There are, at present, no price ceilings for new oil production nor for production from stripper wells which produce 10 barrels or less per day. According to recent testimony given by officials of the Federal Energy Office, on a national average, the price of new crude and stripper well production has risen to about $9.51 per barrel. In many cases, the price is well over $10—approximating the international market prices set by the cartel of Mideastern oil producing countries. The provisions of section 110 would require a rollback of these prices to an average range of between $5.25 and $7.09. Your Conferees believe that this price range is sufficiently broad to permit the President to establish prices which are adequate to induce production of additional crude supply while providing pricing protection to industrial and individual consumers at a time when the market mechanism of supply and demand is not working so obviously.

For example, in December, 1972, the National Petroleum Council reported to this Congress that, in order to achieve the greatest feasible level of domestic self-sufficiency, the domestic price of crude oil would have to rise from $3.18 per barrel in 1970 to $3.65 per barrel in 1975. In August, 1972, the Independent Petroleum Association of America testified that a domestic price of $4.10 per barrel would be adequate to assure the United States 100 percent self-sufficiency by 1980. While these projections were stated in "constant dollars", after adjustment, the National Petroleum Council's price would be projected at $4.35 and the Independent Petroleum Association of America's price would be increased to $4.55. It is to be emphasized that these price estimates are well within the national average ceiling price of $5.25 called for in section 110 of the Energy Emergency Act. Moreover, it should be kept in mind that this section permits the President to increase the ceiling price to levels which would result in a national average price of $7.09. This is well above the most recent projection of the Independent Petroleum Association of America calling for an average price of approximately $6.65 per barrel for crude oil in order to maximize domestic production by 1980.

Let us point out also, that as recently as January 23 of this year Deputy Secretary Simon stated that the long term supply of crude oil—i.e., the level needed to bring supply and demand into balance and to eliminate the shortage—would be "in the neighborhood of $7 per barrel within the next few years". In Secretary Simon's words, any price higher than that creates "a windfall—a price to producers which is more than producers could have anticipated when investments were made and more than that required to produce all that we can in fact expect to be supplied".

We believe that you share my concern and the concern expressed by the Conference Committee with the inflationary spiral which confronts this nation. Because fuel is so basic to every industry and every homeowner, the continued acquiescence of the Administration in permitting market prices of petroleum products to increase by as much as 300 to 350 percent in the last year could well have a multiple inflationary impact which could threaten our nation's ability to remain economically viable. It is patently clear that the Congress must act to restore rationality to the market in petroleum products.

The people of this nation have, over the course of this last year, voluntarily made considerable sacrifices. As your constituent mail clearly indicates, their patience has been exhausted, and frustration with long lines at the gas pump coupled with significantly increasing prices has markedly increased. It is incumbent on us in the Congress to respond to their needs and to act forthrightly to equip the Executive with full powers to deal with this situation. This legislation is an important and necessary step in that direction. It is one we must take now without further delay.

We wish to emphasize that this bill contemplates temporary measures to extend only for the next 14 months until May 15, 1975. As we gain further experience and acquire additional information, amendments in its provisions may become necessary. But we cannot and should not defer action awaiting a more perfect solution to our problems. We respectfully urge your support of this current legislative effort.

Mr. Speaker, I intend to vote for the conference report even though some provisions are objectionable to me.

My support comes from these provisions:

First, the reporting provisions contained in the bill will give us verified, timely, uniform information on reserves, refining capacity and utilization and inventories. **[Sec. 124.]** Hearings before the Select Committee on Small Business the third week in January demonstrated beyond any reasonable doubt to this participant in these hearings the great need for reliable information. Regrettably, the American people lack confidence in the assurances that the energy crisis is real that it is not contrived. Better information will greatly help in determining the fact upon which confidence must be based.

Second, title II provides for the relaxation of clean air standards which allows certain stationary powerplants to convert from oil or gas to coal. Because the petroleum shortage is in part, caused by the earlier conversion from coal to oil and gas this provision will in certain cases relieve the strain on scarce oil inventories.

Also, the provision to freeze auto emission standards at the 1975 standard for 2 years will, I believe, make it possible to increase automobile gasoline economy significantly. **[Sec. 202 CAA.]**

I would have preferred to have the amendment of the gentleman from New Hampshire (Mr. Wyman), adopted when the bill was considered in the House. It would have made it possible to remove emission control devices on automobiles in those areas of the country where air quality standards are not in jeopardy. Unfortunately, Mr. Wyman's amendment did not carry. Thus, the provision to freeze emission standards at the 1975 levels is all the more necessary.

Finally, I shall vote for the conference report because of the rollback provisions. [**Sec. 110.**] Some have said that the rollback from $8 to $10 per barrel to a maximum of $7.09 will be a disincentive for increased production. I think in judging that question we need to be reminded that the price of crude was approximately $3.28 only a few months ago. Only a little more than a year ago the National Petroleum Council said that to stimulate production to achieve domestic self-sufficiency the price would have to increase from $3.18 per barrel to $3.65 per barrel by 1975.

In August 1972, the Independent Petroleum Association testified that $4.10 per barrel was necessary to achieve domestic self-sufficiency by 1980. The most recent projection by this same group was an average crude price of $6.65 per barrel. This legislation permits a price of $7.09 per barrel which it seems to me is a most adequate incentive. I do not believe that less product will be available.

I do not favor the provisions for rationing contained in **section 104** nor the conservation power given to the President in **section 105** and shall vote against those sections when given that opportunity.

Mr. Speaker, I urge support for the conference report.

I want to address a question to the chairman or to the gentleman from Massachusetts. With respect to the price of crude at $7.09, it is an arbitrarily set sum, and I do not suppose anyone knows for sure whether it is going to be enough or too little. Since foreign oil or imported oil comes in now at $10, $12, or $14 or more per barrel, there is every reason to believe that this bill might cut down domestic production. We hope it will not. But if the figures show that production is not forthcoming and that the price of $7.09 is not a realistic figure, and if that is so determined by the President or the FEO office, would the gentleman or the committee recommend legislation that would make this correction? Otherwise, we will find ourselves in a position of giving great favor to imported oil producers, and a disservice to domestic producers.

Mr. MACDONALD. In answer to the gentleman's question, and I cannot speak for the committee, nor do I intend to, I do know that it is in the intent of the committee to try to treat everybody fairly.

I would personally guarantee the gentleman that under the statements given by Mr. Simon and by the independent producers that were just read into the Record by the gentleman from North Carolina, such will not be the case. I think it is perfectly possible to make a decent profit at $7.09. I do not believe there is anyone in the industry who can tell exactly what a fair price is. I have asked various people, and they come up with various answers. I am sure the gentleman has done the same thing. As of now, it seems like $7.09 is more than a reasonable figure to produce the oil and to have an incentive to get more oil for our people, and still keep the gas and oil people's incentive enough to stay in business to produce energy for the American people.

Mr. PICKLE. I appreciate the gentleman's willingness to consider this possibility. The proposed rollback is an arbitrary sum, so we still must do what is right and fair for the domestic or independent producer.

Mr. MACDONALD. My personal response to the gentleman is that, in my judgment, that would happen; yes.

Mr. PEYSER. Mr. Speaker, I only take the floor at this time because of something that has just come to my attention. It seems to me part of

this bill outlined as No. 9 in the staff summary certainly will have an impact on a piece of correspondence that I have just received. This is a letter sent out by a major oil company in New York, and it was sent to its franchised dealers. The letter is dated February 25. I will read in part from the letter. This is from the Mobil Oil Corp., and it is to a franchised dealer in my district:

> If you have a contract with Mobil, this will serve as notice to you that your contract will not be renewed and will expire at the end of its current period.

It goes on to say:

> At the expiration of your current contract or effective immediately if you have no contract, sales of Mobil products will be made on the following terms and conditions:

And it goes on to outline the terms and conditions which are such that the dealer would never have any notification of whether his orders were going to be delivered or not or accepted or not until the day of delivery. It is obvious nobody can stay in business on the basis of not knowing at any time whether he is going to get anything regardless of what the allocation is.

My question to the chairman is: Is it the chairman's understanding of **section 109** of the conference agreement, that the issues on which I am addressing myself, is covered and the franchise dealer will be protected?

Mr. STAGGERS. This section is written especially to protect the franchise dealers.

Mr. PEYSER. I think this is a very important part of this bill. The independent station owners are entitled to this protection. In turn, the public will be protected and assured of a place to get gasoline when it is available. After nearly 2 months of waiting, it is about time that this Congress took some positive action.

Mr. ALEXANDER. Mr. Speaker, during the past year the oil refineries have been permitted to increase the wholesale price of propane gas to the retail dealer, and therefore, to the consumer as much as 350 percent. Since most of the people using propane in States such as Arkansas are rural, elderly, or poor people, the practice has been discovered there to be patently unfair and causing extreme hardship.

I am advised that after refining a barrel of crude oil only 3 percent of the volume is refined into propane gas and the rest is refined into gasoline and fuel oil, middle distillants and other fuel oil products. Only 3 percent of the oil is refined into propane gas where an increase of 350 percent in the wholesale price has been permitted.

I have a question or two I would like to ask the chairman. Referring specifically to **section 110**, prohibition of inequitable prices. If this legislation becomes law will there be a rollback of the propane prices?

Mr. STAGGERS. Yes, there will.

Mr. ALEXANDER. Is it intended in this conference report that under **section 110** only those costs which are traditionally and directly related to the production of propane gas shall be considered in determining the new price of propane gas?

Mr. STAGGERS. That is the intention of the committee.

Mr. ALEXANDER. If this provision becomes law then it is my understanding that a propane price rollback amounting to approximately

50 percent of the current price would occur, a reduction of 50 percent in the current price. Is that the gentleman's understanding?

Mr. STAGGERS. That or more. The gentleman is talking about propane?

Mr. ALEXANDER. Yes. In other words if the price is approximately 27 cents at this time, we could expect a 12 to 15 cent per gallon reduction in the current prices of propane?

Mr. STAGGERS. I would say to the gentleman that is the intent of the committee and the conferees, but I must say this in fairness, that will happen only in certain cases, in certain market areas.

Mr. ALEXANDER. I thank the chairman.

Mr. ECKHARDT. Mr. Speaker, I thank the distinguished chairman of my committee, and my distinguished friend, the senior member of the subcommittee on which I serve. I have a very brief time to make, I think, a very important point.

I suppose there has not been an action since 1322 in England or in the United States in which the sovereign has been given authority to make law in a broad range of affairs and in which the parliamentary body has only been given authority to negate that law; but section 105 does precisely that. These provisions, with respect to the making of law taking effect before Congress has been given an opportunity to act upon it, came into being, as a result of the conference committees action.

Nothing appeared in either the House or Senate version that clearly authorized the making of law by the President by which he could, for instance close night grocery stores; he could close bowling alleys at night; he could close the whole display lighting industry in the country without any opportunity for Congress to stop it, except to rescind the Presidential fiat before the terminal date, the 15th of March this year, or after March 15 by vetoing it after it is submitted to Congress.

I think it is wrong to have only 4 minutes before this body to argue against a process that has not been before either House of Congress; that provision which was of somewhat the same nature was rejected in this body by over 100 votes. It was rejected in committee by 19 to 10. Yet the conference committee came back, not with a compromise between the Senate and the House, but a compromise between the President and the Senate.

Now, that is, of course, the point at which section 105 would have been subject to the provisions of rule XXVIII, clause 3. But at the very least, we should strike from this bill new legislation that for the first time in Anglo-American history since 1322 gives authority to the sovereign or the President to put into effect law and only tells the parliamentary body that it may at a later time approve it or overturn it.

Now that, I think, is most offensive to the democratic process and that is the reason that rule XXVIII, section 3, was devised to protect this body from such an action. If we waive that rule, we run into the kind of situation that compels me today to discuss one of the most important, sweeping, and drastic changes in our democratic system, within the scope of 4 minutes of debate.

Mr. Speaker, I have a letter here that I addressed to Mr. Simon asking if he had authority in the allocation bill to ration without

further action before this body. I have the answer of his General Counsel, which is somewhat equivocal, but there is no question that he has the right to ration.

The letters follow:

FEDERAL ENERGY OFFICE,
Washington, D.C., February 21, 1974.

HON. BOB ECKHARDT,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN ECKHARDT: Mr. Simon has asked me to respond to your letter concerning the President's authority under the Emergency Petroleum Allocation Act of 1970 to implement a system of gasoline rationing at the retail level. I hope you will forgive our delay in responding, and apologize for any inconvenience we may have caused you.

We have examined carefully the points made in your letter and both the language and full legislative history of the Act. Having done so, we believe a respectable argument can indeed be made for the proposition that the allocation authority therein conveyed includes authority for end use rationing.

On the other hand, we cannot close our eyes to the fact that since enactment of the Emergency Petroleum Allocation Act, the President, other spokesmen for the administration and numerous members of Congress have taken the position that further legislative authority is needed in this area. As you know, the Senate has just approved and sent to the House the Conference Report on the Energy Emergency Act, S. 2589, one of the principle provisions of which expressly grants the President authority to promulgate a rationing plan.

In view of this Congressional action, and in light of the fact that both Congressional and Administration officials have apparently been proceeding on the assumption that such additional legislative action was necessary, the Congressional intent underlying the Emergency Petroleum Allocation Act and hence the necessary effect of the language itself must be viewed as open to serious question. We are constrained to conclude, therefore, that the issue you raised cannot be definitely resolved pending a more explicit statement from Congress.

I regret that I could not be more definite in my reply, and hope that this statement of our understanding of the matter will be of assistance to you.

Sincerely,

WILLIAM N. WALKER,
General Counsel.

HOUSE OF REPRESENTATIVES,
Washington, D.C. January 4, 1974.

MR. WILLIAM E. SIMON,
Administrator, Federal Energy Office, New Executive Office Building, Washington, D.C.

DEAR MR. SIMON: Senator Henry Jackson has been quoted recently in various news report as saying that the President presently has the authority to draw up a standby rationing plan but cannot order such a plan into law without further Congressional action. I strongly disagree with such a statement, for I feel that the Emergency Petroleum Allocation Act of 1973 does authorize the President to implement rationing.

Section 4(a) of the Emergency Petroleum Allocation Act mandates Presidential promulgation of a "regulation providing for the mandatory allocation of crude oil, residual fuel oil, and each refined pertoleum product, in amounts . . . and at prices specified in . . . such regulations." Section 4(b)(1) states that the regulation "to the maximum extent practicable, shall provide for . . . equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices . . . among *all users*." (emphasis added) Gasoline rationing is no more than the allotment of specific amounts of gasoline to end-users and is clearly embraced within the above language.

In December of 1973 your Federal Energy Office issued draft regulations instructing refineries to limit their gasoline output to 95 percent of the gasoline produced in the first quarter of 1972. Subsequent reports from FEO officials indicate that the 95 percent figure may be scrapped in favor of a flexible system allowing the government to order refineries to change their product mix on a periodic basis. Whatever the means, it is clear that action by your office will

result in a considerable reduction of the amount of gasoline available to the ultimate consumer. Without an allotment system for the end-user, the effects of reduced gasoline production are likely to include forcing consumers to stand in long lines at gas pumps without being assured that gasoline will be available once they reach the front of the line, pay outrageous prices or be left to the mercy of individual gasoline companies and dealers who can exact whatever demands they want before an individual can obtain gasoline. It was to prevent just such results from shortages that the Emergency Petroleum Allocation Act stipulated that the allocation regulations are to provide for the "equitable distribution of . . . refined petroleum products at equitable prices . . . among all users."

That the Emergency Petroleum Allocation Act does authorize the allocation of gasoline to end-users is further supported by the Emergency Petroleum Allocation Act Conference Report (Report No. 93-628).

On page 13 of that report, the conferees stated:

"[B]ut it is not generally expected that the regulation promulgated by the President will be burdened with the complexities of assigning fuels to users *unless such assignment is necessary to carry out the purposes of the Act.* When required, however, it is intended that the President would have full authority under this Act to identify permissible uses of covered fuels and to restrict the amounts which may be made available to such uses." (emphasis added)

This language, adopted by both Houses of Congress, read in conjunction with the purposes expressed in section 2(b) that the "Act is to grant to the President of the United States and direct him to exercise specific temporary authority to deal with shortages of crude oil, residual fuel oil, and refined petroleum products . . ." and in section 4(b) that the regulations are to provide for the "equitable distribution of refined petroleum products . . . among all users" should leave no doubt that the Act authorizes the President to undertake the end-use allocation of gasoline.

For these reasons I am convinced that the President now has the authority to implement gasoline rationing. But the various statements which have been made by persons in both the executive and legislative branches have, I think, created some confusion in the public mind on the point. It is necessary, of course, for me to respond to questions from constituents concerning the matter. Therefore, it is a matter of very pressing interest to me to have your understanding of the Emergency Petroleum Allocation Act as to the authority of the President to undertake end-use allocation of gasoline (rationing). Would you please give me your response setting forth your views at your very earliest convenience.

Sincerely,

BOB ECKHARDT.

Mr. RHODES. Mr. Speaker, I would like to address myself to the so-called rollback section of the conference report. It is my hope that when the separate vote occurs, as provided in the rule, that the section will be voted down. In my opinion this section would result in the production of less energy, instead of more energy. **[Sec. 110.]**

I am at a loss to understand how anybody can think that we are going to produce more oil by cutting the price on new production, or new crude oil.

I am also at a loss to know how anybody thinks that the American consumer will be well served by the price structure created in this bill. The price on oil, which we have anyway in production, would be raised, causing the price of gasoline and other petroleum products to go up. The price increase on refined products would be to no avail, however. The ceiling on crude oil prices would not produce one drop of oil in excess of that which we now have.

Also, I think we ought to look to the future with regard to new production, not only production by conventional methods, but by other, newer methods. There are deposits of oil shale on the western slope of the Rocky Mountains which I am told contain three times as much oil as there is under the Middle East. We say that the Middle East is the

greatest pool of oil in the world. Apparently, it is not; the American Rocky Mountains are.

At a price, and I understand the price is estimated to be something near $10 a barrel, it would be feasible under existing technology for the oil companies who have leases for that purpose to extract oil from oil shale and to market it in the markets of the world to add to the energy supply of the world. However, if the inflexibility which is inherent in the provisions of this conference report are to become law, then of course it would not be possible for oil to go to a price which would allow the production of oil from oil shale.

As stated before, it has been said by the President that if this provision which, as he says, only manages the scarcity instead of producing more—if this provision were to become law, it will be vetoed, so that there will be no opportunity to get this particular conference report into the law. I hope that if this happens, if the veto is upheld, as I rather assume that it might be, that the Members of the House and Senate, the committees move to get a bill adopted which will be passed. There are provisions of the bill which are needed.

Mr. Simon, the Federal Energy Administrator, certainly needs a provision which will at least allow rationing in the event it becomes necessary. [Sec. 104.] He does not think it will become necessary; I do not think it will become necessary, but the existence of the authority to ration I regard as very important. I think it is good psychology for the people who are in the business of producing and selling petroleum products to know that they can be rationed in the event that it becomes necessary. I think that is an important feature.

I think the conservancy part is an important feature. [Sec. 105.] Therefore, it is certainly not my idea to say that this bill in toto is bad. It is not, but there are provisions of it which are so counterproductive that the President of the United States, I am sure, will find it necessary to exercise a veto.

As far as excess profits are concerned, of course we do not want the situation involving the energy crisis to redound to the benefit of anyone who tries to exploit it at the expense of the American consumer. But the Committee on Ways and Means is doing its thing. It is going to get out an excess profits bill, and that is exactly where the matter should rest. The Committee on Ways and Means has expertise in the field. I am satisfied that at the proper time, before too long, a bill will be brought out which is adequate to take care of the excess profits tax situation.

Mr. Speaker, another point which I think the Members of the House should understand, is that this a nongermane provision of the bill; nongermane because this was not in the Senate bill nor in the House bill. We amended the rules of the House not many months ago to provide that this sort of thing would come up for a vote on the floor of the House. I hope we will not undo what we did before by allowing nongermane material to become a part of the conference report.

Mr. Steiger. Mr. Speaker, I take this opportunity just to make a few observations.

Mr. Speaker, this body some time ago accepted an amendment that would exempt the small stripper well operators from price and allocation provisions. These are the high-cost producers of oil. These are the operators that produce 11 barrels or less per day. In my State, the

average production from these wells is 3.9 barrels per day. As a result of that provision, wells that have been capped for years have been reopened, and with the profits that have been made the wildcatters have gotten into the field and began looking for new oil. These are the gamblers who in yesteryears found new reserves.

Now, what are we doing? Well, over in the other body they beat the big majors across the backs about what they were doing. Screamed about these profits. I make no case for the majors; my plea is that we do not kill the small operators in order that the profits of the majors are reduced. In this legislation we are aiming not at the big producers, but also the small stripper operators.

Mr. Speaker, when the gentleman from North Carolina said this is an oil conservation bill, he is exactly right. That is exactly what we are going to do. We are not going to bring oil out of the ground for the use of people; we are going to keep it in the ground because these small operators cannot exist and neither can they afford to seek new production.

You want more oil? Then do not eliminate the small producer. I hear many colleagues weep for the small businessmen—I sometimes wonder if they ever listen to them—do they really give a damn.

Mr. ADAMS. Mr. Speaker, I have been quite surprised at some of the remarks that have been made concerning whether or not there are incentives in this bill for the production of gasoline, and also whether or not we will have to manage a scarcity.

I think it is very important for 1 minute that we look at what this bill tries to do as one overall package. First, it says, "Let us inventory and find out what we have." Second, if we find we have a scarcity, let us put the authority in here to manage that scarcity.

The third there is a flexible provision on the rollback of prices so the consumer will be fairly treated. **[Sec. 110.]**

The gentleman from Texas (Mr. Eckhardt) and the gentleman from Illinois (Mr. Anderson) both attacked the rollback provision from different directions, one saying too much and the other not enough. The reason they did so is because at the present time we have a situation where as Mr. Simon stated on "Issues and Answers" and before the committee, and as the petroleum industry has testified, $5.25 a barrel is enough to give an incentive for production, and we give flexibility to go even above that to as much as $7.09.

At the present time old oil is at $5.25 a barrel. We have the right in the so-called rollback provision **[Sec. 110]**, here for a 35-percent flexibility, so it could go up to $7.09. That flexibility is in the President. The matter was well considered in the committee. There is the problem of whether or not enough incentive is in this bill.

Mr. Speaker, I think probably there is too much incentive, but we have left the right to adjust the situation with the President.

I want to speak for a moment to the point which the gentleman from Texas made, and I think it is a very important one. Section 105 is a dangerous part of the bill. These are the energy conservation plans. I have not liked granting these powers to the President and neither has the gentleman from Texas.

But at the present time under the Emergency Allocation Act, Mr. Simon and Mr. Sawhill are changing the regulations now without the Congress doing anything.

They said, for example, that distributors could not use a flag system to determine his regular customers or his nonregular customers or the fact that he was not pumping gasoline at all. There were a number of dealers who used these flags to prevent riots in their lines.

Those regulations are changing now.

This is in the bill in order to provide an orderly system until March 15, and I want to state to the gentleman that this bill is probably not going to get to the President's desk much before March 15. What we have after the date of March 15, is to provide a veto of the regulations, and after September 1, then we have to go through the regular congressional processes.

I do not like it, but I am going to vote for it.

Mr. ECKHARDT. Mr. Speaker, I understand that until September 1, this authority exists in the President unless vetoed?

Mr. ADAMS. The gentleman is correct.

Mr. ECKHARDT. And it enlarges his authority beyond mere allocation regulations. In other words, the existing law limits the authority to allocation regulations?

Mr. ADAMS. It has limited it, but they have gone beyond that in their interpretations of what is equitable and what is a proper allocation system.

What I am saying to the gentleman is that we have tried to produce an orderly system of regulation here rather than issuing regulations as they do now.

Mr. ARCHER. Mr. Speaker, as I sat here and listened to the debate it became very clear to me what this House is going to do. Perhaps it is unless to take this podium to discuss many of the things that have been said and a few that have not been said.

However, it should be put in the Record that my colleague from Kansas (Mr. Skubitz) is 100 prcent accurate: This is an oil conservation bill; wells will be shut down that are now producing oil if this bill is passed. Make no mistake about that. When you vote for this bill you are voting for longer lines at the service stations and less crude oil in the United States of America.

There are wells today producing throughout this land, where the cost of production is in excess of $6 per barrel, so-called stipper wells, secondary and tertiary production methods, which are highly expensive and which would have been closed down before. They are producing today because they have the right under the current law to make a pofit. A common example is one field in west Texas which is producing 200 barrels of oil a day, from 60 wells, with the cost of production being over $6 per barrel.

When you pass this bill you will shut down every one of them and much of that oil will be lost and will be lost forever, because many of these wells once capped cannot produce again. Unfortunately, outdated figures from 1972 were quoted by Mr. Broyhill of North Carolina. They no longer represent the cost of exploring and producing a barrel of oil. In the last year alone, the cost of drilling a well has increased 40 percent or more. No mention of this was made by the proponents of this legislation. The price permitted in this bill will make the drilling of many new wells uneconomical. Exploration will be curtailed, production will suffer, and the consumer and our overall econ-

omy will be the losers. It is rather incredible to me that we would take a position that would deny the people of this country desperately needed oil and at the same time add more and more power to a Presidency where we have condemned the policy of giving power to that Presidency.

Mr. GOLDWATER. Mr. Speaker, I rise in support of the response by the chairman of the Interstate and Foreign Commerce Committee to the question asked by the gentleman from Texas (Mr. Pickle). At this point I ask permission to revise and extend my remarks.

Mr. Speaker, the need for household moves is one this House addressed when we originally considered this bill. I am pleased to know that it remains the intent of Congress that fuel be provided for household moves.

It is apparent that Congress must make this intent clear to the administration. To date the administration has not addressed this vital need.

The allocation regulations are set forth in the Federal Register, of Tuesday, January 15, 1974, vol. 39, No. 10, part 3, at page 1944. Servicemen and other people using do-it-yourself moving methods are not included under those regulations.

This is a significant problem. To put the scope of the situation in proper perspective we should note certain facts. In 1973, 12.5 million families moved or 18.7 percent of the Nation's 66,890,000 households. It should also be noted that 46.8 percent of these household moves utilized do-it-yourself household moving equipment.

And these figures are for 1973. They do not include the effects of the energy crisis. A week ago the Department of Labor released information showing that the number of workers claiming they lost jobs because of the energy shortage has risen steadily since early December and the latest count stood at 226,000.

The Manpower Administration said more than 2,618,000 workers are receiving unemployment insurance benefits for the week ending January 19, an increase of 98,100 from the previous week and more than double the number receiving benefits last September 15.

We must concern ourselves with the productive individuals who lose their jobs due to the energy shortage. These people want to work. Past experience shows that many people will move their households to locations where employment is available. We must protect and assist the mobility of the American work force.

I am pleased that this report makes clear our concern and determination to get fuel to those people who have to make a household move. Otherwise we will continue to find the Federal Government standing in contradictory positions. **[Sec. 104.]**

One example of the contradictions I refer to is the Federal Energy Office's consistent pronouncements decrying the energy crisis' effect on employment while, at the same time, the regulations they have formulated for the allocation of fuel actually eliminate the availability of fuel to the families who find it necessary to relocate for employment purposes.

Another example of the Government's current contradictory position can be seen by looking at the activities of two executive agencies.

There have been instituted in the past, programs for the relocation of workers who have lost their jobs in difficult times. During the 1971 aerospace employment cutbacks the Department of Labor provided up to $1200 for the relocation of workers. We have now heard talk that such a program is again under consideration.

What could be more contradictory than for the Government to consider on the one hand providing financial assistance for necessary and purposeful household moves and, on the other hand, eliminate the availability of the fuel needed for such moves.

There is an energy crisis before us. Its effects are raising serious concerns about a related unemployment crisis. We must address these problems with reason, not with bifurcated programs and regulations borne out of myopic reaction.

We must assist the American people in their efforts to help themselves. I submit that providing the fuel so that a family suffering unemployment in one area can relocate in another area where employment is available is a type of assistance needed.

We should also remember that 46.8 percent of the household moves undertaken in this country utilized do-it-yourself household moving equipment.

The Federal Energy Office must recognize that the trucks and trailers of the do-it-yourself household moving industry are unique. They are all powered directly or indirectly by motor gasoline. Gasoline that the moving family itself purchase at retail stations along the route to their destination. People who find it necesary to utilize the service provided by the do-it-yourself household moving industry must receive fuel.

Family moving is not undertaken lightly, it is a difficult experience. People who undertake household moves do so out of necessity. It is not a recreational activity.

The household mobility needs of the American people are of national concern. I am pleased to see that this legislation provides for the availability of gasoline for the necessary nad purposeful moves of the American people. I compliment my colleagues who served as conferees for addressing and providing for this very important need.

Mr. PICKLE. Mr. Speaker, upon the passage of S. 2589, amended by this House, there was a colloquy on the floor, December 12, between the chairman, Mr. Staggers, and Mr. Annunzio with reference to the intent of the so-called Pickle amendment as follows:

Mr. ANNUNZIO. Does subsection (4)(J), found on page 55 of the report, include under the term "household moves" the situation where a soldier moves his family's personal posessions from one base to another in a trailer which may be rented or borrowed or belong to him?

Mr. STAGGERS. That is included in the bill and taken care of in the provisions of movement of persons.

Mr. ANNUNZIO. They would be supplied with gasoline. Would your answer be yes?

Mr. STAGGERS. Yes; my answer would be yes.

I would like to point out that in the House-Senate conference on S. 2589, the Pickle amendment and other amendments were deleted: however, a recognition of the effect and need for my amendment was agreed to in the Conference Report No. 93–793 and can be found on page 48 as follows:

The Conferees also recognize that end-use rationing plans should give consideration to the personal transportation needs of American military personnel re-assigned to other duty stations and of those persons who are required to relocate for employment purposes.

I would like to point out further that in the Senate debate of January 29, a colloquy was had between Senator Jackson and Senator Allen specifically on this language of the conferees as follows:

Senator ALLEN. Mr. President, I read from Senate Conference Report No. 93–663, page 45. Does this language mean that the intent of the conferees is to accommodate the do-it-yourself movement of both people and their personal possessions from one job site to another during these times of national stress, when jobs in the country are either opening up or closing down and people may be very mobile; seeking greater opportunities or greater economic security?

Senator JACKSON. Mr. President, the needs of the Armed Services necessitate the periodic reassignment of personnel and the transport of these personnel, their families and their household goods from one duty station to the next. In addition, we Americans are a very mobile people. The family move from one city to another in search for better employment is probably more common here than in any other nation. It is a routine facet of our society and of our economy. In incorporating in the Conference Report the passage which my esteemed colleague has cited, it is the intent of the conferees to acknowledge those two facts. Furthermore, it is their intent that, insofar as it may be possible, and consistent with the other provisions of this Act and of the Emergency Petroleum Act of 1973, end-use rationing plans should be so developed as not to unduly inhibit this normal movement of people and their personal possessions be it by van line or by hired vehicle.

Mr. Speaker, the proposed gasoline rationing contingency plan, issued by the Federal Energy Office and printed in the Federal Register on January 16, 1974, does not express any concern or show any recognition of the need pointed up by my amendment. I would ask the gentleman from West Virginia, if as chairman of our committee and as a conferee, he is still convinced of the need for the Federal Energy Office to carry out the intent of Congress as expressed by the Senator from Washington and by the Senator from Alabama and by his answer on this floor, December 12, to the question made by the gentleman from Illinois?

Mr. STAGGERS. I believe that the Senator from Washington has properly stated the concern of the conferees.

Mr. PICKLE. Mr. Speaker, never before in the history of our country has the mobility of families who are moving to seek employment, or an education, or a healthier environment been so threatened as it is by the current energy crisis. I find nothing in the proposed gasoline rationing contingency plan of the Federal Energy Office that promises any relief to lower income families who for reasons either of employment, health, education, change of marital status, or retirement must utilize do-it-yourself moving equipment when they take to the road for a household move. These are essential, purposeful, nonrecreational moves made by families who have no other viable alternative except to liquidate their household belongings. Those of my colleagues who remember the "Grapes of Wrath" migrations from the dustbowls of the 1930's know what I am talking about.

The expected displacement of people due to the energy crisis could further intensify the need for mobility to where the jobs are, and the need for an economic, flexible system of household moving.

No group of people in our economy feel these economic pressures so acutely as the younger families with school-age children, young

couples, young unmarrieds and the elderly. These are the age groups who have the lowest job stability, rising needs, and limited savings. They are the ones most likely to face the psychic and monetary traumas that are connected with moving from one locality to another. They are the ones who must stuff what few household goods or tools they can into the back of a car or into a rented trailer when they have to make a move. When such families must set out for a destination hundreds or even thousands of miles away, they should have assurance that they will not become stranded en route due to lack of fuel.

Mr. Speaker, the only recourse so far proposed by the administration, for servicemen's families and other people using do-it-yourself methods of moving, is to apply to the individual States for gasoline under the State setaside provisions. The State in turn must justify the hardship application to the appropriate Federal office. Such recourse is a virtual impossibility, only further compounding the problem for the approximately one out of five families in our country who must relocate each year. Few Governors can be expected to provide gasoline to persons who are only passing through their States when it must be provided from the meager amount allocated to the States under the setaside provisions of the proposed gasoline rationing contingency plan.

Mr. Speaker, the intent of this Congress with relation to the provision of gasoline for those families who have to move their household possessions must be clearly and forcibly brought to the attention of the appropriate agency drafting the necessary regulations so they will incorporate our intent in whatever rationing plan may be adopted. Family moving is rarely undertaken lightly—it is a difficult experience at best involving large psychic costs as well as considerable monetary expenditures.

It is a matter of national concern that our populace be able to carry out considered decisions on where to live to best meet the economic and social demands of these hard times. **[Sec. 104.]**

Mr. BROWN of Ohio. Mr. Speaker, unfortunately a vote for this bill and for this conference report with the language which it has in it on so-called price rollbacks **[Sec. 110]** is a vote for a shortage of oil and a vote for the higher price of the oil that we do have moving through the supply systems of our country.

This was very effectively illustrated by the colloquy between the gentleman from Texas (Mr. Eckhardt) and the gentleman from Illinois (Mr. Anderson) during the debate on the rule.

$3.80 a barrel oil—and there is some in this country now flowing into the supply systems—will, under this conference report rollback, cost $5.25 a barrel or, if the President chooses to raise the price or allow it to be raised, will cost $7.09 a barrel. So low-priced oil will now become higher priced oil, and the $8 a barrel oil which has come in since the imported oil was cut off will not be in the marketplace at all because people are producing from wells that cost $8 a barrel to drill and you are putting a cap on that well, so you will not have that oil.

The result is that we will have less oil, and that the oil or the product that we do have in the marketplace will generally cost more, which will result in foreign oil not finding its way into the United

States because the foreign oil will go abroad where it can sustain a higher price. The companies who are getting foreign oil now will have a higher price at their pumps than do the companies using domestic oil, and the result will be that people will go to those outlets that have the lowest of the two prices. Anybody who tries to sell foreign crude oil through the system in this country will say to heck with the United States, let us get the oil into England where it costs a dollar a gallon, or where the barrel price equivalent is much higher.

The conclusions I have come to, having served on the conference committee, is that a candidate for the U.S. Presidency should not be permitted to participate in conference negotiations because, in fact, that is where this section came from, from the other side of the Capitol, and who are making an effort to put into this piece of legislation really one of the more attractive things about our system, and that is a short-term result that would look good politically, but would be disastrous economically.

Of course we have done a very clever thing here. We have given the President the right to ration gasoline, when we create the shortages, and the result is that by the time we get into the elections this fall, the results of this piece of legislation will be devastating for those people who voted for the conference report. I think it is a gross error to look at a vote for this conference report as a matter of political advantage. I think it will be a definite disadvantage by the time the people, this fall, face the problems that will grow out of it.

Mr. MAYNE. Mr. Speaker, if the gentleman will yield, I want to say that I did not vote for the price rollback **[Sec. 110]**, but when the price of propane to the people in my district has risen 300 percent, and has risen 300, 400, and 500 percent in other places in the country, it would seem to me that there is total bankruptcy in the leadership in this industry, and that the purpose was to stop this sort of thing——

Mr. BROWN of Ohio. Mr. Speaker, I might say to the gentleman from Iowa that this effort in oil is brought to us by the same group of people who brought us the beef shortage. They tried to roll back and hold down the prices of beef, and the result was that beef prices went higher than ever, and in the marketplace beef became scarcer and scarcer until the price control was lifted.

Mr. ROE. Mr. Speaker, the chairman of the full committee has allotted me 2 minutes in which to say what I would like to say on this most vital issue, and that is that it seems to me everybody in this House is worried about whose ox is being gored, and they are worried about their own ox being gored, but what about the essential needs and rights of our people. I have not heard too many Members get up today and talk about a simple, basic point, and that is that there is a certain thing we are responsible for in this House, I believe, and that has to do with the consent of the governed who are the American people.

I wonder if their direct representatives in this House are listening to their people. Our people are not concerned with the feelings of the oil industry. My people in my State are coming back and saying let me tell you something, Democrats and Republicans alike, I think you will have to answer to us for what you have done or not done for us the American people. And certainly we will have to answer for our actions

because we have granted to this administration the right to allocate our fuel and our oil and they have done their thing, and they have botched it up terribly. Prices are the highest they have ever been for gasoline throughout every State in this Nation, certainly in my State, and I see no point of equity to the American people in that situation.

Let me say one thing about this bill. I do not like two sections of it, but I will definitely vote for the price rollback **[Sec. 110]** because I think it is fair to the American people.

I beileve we ought to share the wealth, and I believe we ought to share the economy of this country, and this has to be done through the power of our people through the consent of the governed by their elected representatives.

I think there is just one final thought to keep in mind if you believe in this wisdom, and that is if you give the administration legislation to be able to allocate the fuel **[Sec. 104]**, and if we have the chaos and the disorder that we have now, where we have a lack of the truth, and where people do not understand, and they disagree, and they are literally badgering each other and battering each other, would it be such a terrible thing to say to Mr. Nixon, to say to our good President, "Here we have tried in concert to present an approach and a new idea, we have tried to do this in concert with the Congress. So let us try one more time, and put some teeth into this law to give the people of the United States fair play and justice."

That is what my people are saying about it in New Jersey, not the oil industry.

Mr. RUNNELS. Mr. Speaker, I rise in opposition to the conference report on the National Energy Emergency Act, S. 2589. Our Nation has been bound and gagged by a restricting fuel allocation program and a restraining set of wage-price controls for far too long. The various haphazard cures to our fuel shortage malady which have been administered to this country have turned out to be worse than the disease.

The best remedy available for our energy crisis and especially for the gasoline shortage is to transfuse a heavy dose of free enterprise into Uncle Sam's body. Supply and demand have been the lifeblood of our Nation and it is time we realized that fact. Our immediate problem is that the National Energy Emergency Act contains provisions which would kill off one of the most important elements of the free enterprise system still in operation by rolling back the price of stripper oil and new oil. I am talking about **section 110** of the bill.

Stripper wells are operated by almost 4,000 independent oil and gas producers throughout the Nation. These independents are repsonsible for approximately 80 percent of the exploratory drilling that takes place from year to year. The price of crude pumped out of a stripper well is now in the vicinity of $10. If this price is rolled back to a national average of $5.25, these independents are going to lose an awful lot of incentive to continue in their exploration activities.

In New Mexico, in mid-January of 1973, we had 382 locations holding or awaiting drilling rigs, 46 of them were exploratory locations and 336 were development locations. In mid-January 1974, our State had 433 locations holding or awaiting rigs. That is an increase of 51 locations in 1 year. The exploratory location increase was from 46 to 117.

Now what do you think the figures will be for mid-January 1975 if the price of the crude out of these new locations is set at $5.25 per barrel? I will tell you that there is not a roughneck in the oil patch who will bet on those figures going up. When you consider that two-thirds of all the oil we consume in this country is domestically produced and one-fourth of our domestic production is from stripper and new wells, you see that we are talking about a major portion of an oil supply.

Approximately 1.9 million barrels of the 9.2 million barrels produced each day is produced by these independents. If you figure that this oil is currently priced at $9.51 per barrel, a rollback to $5.25 per barrel will dry up over $3 billion per year in possible domestic exploration funding for the independents.

In addition to considering how this price rollback provision [Sec. 110] will seriously curtail domestic exploration, let us consider what this bill means to the consumer. The Federal Energy Office has indicated that this price rollback will probably only mean a decrease of 1.4 cents per gallon of gasoline sold. The Independent Producers Association sets that price decrease figure at 1 cent per gallon and the Secretary of the Treasury, George Shultz, sets the same figure at less than 2 cents.

A good argument can be made for the proposition that this rollback provision will increase prices instead of decreasing them. From all the facts and figures I have read concerning the fuel shortage, it apparently is an undisputed fact that the high price of gasoline today is the direct result of the high price of imported foreign crude, which costs between $10 and $20 per barrel these days, and higher charges for marketing and refining. If this rollback provision is enacted into law and if $3 billion in exploration funds is eliminated, the end result could very well be an increased dependence on foreign crude. That would mean an increase in costs to the refiner and thus to the consumer.

While I am discussing price increases let me point out that the price of wheat has gone up from $2.46 per bushel on February 19, 1973, to $6.12½ per bushel on February 19, 1974, a percentage increase quite similar to the oil price percentage increase during the same period of time. Is a similar rollback being proposed for the wheat producers of this Nation? Obviously not, which makes a person wonder why the independent oil producers are being singled out for a rollback.

There is another important consideration to be made here. It concerns the tax revenues derived from the oil business. In 1973 New Mexico collected $45.5 million in State royalty, school, severance, conservation, and ad valorem taxes from the oil companies. If the average price of oil is $7 per barrel in 1974, New Mexico will collect $72.3 million. If the price is rolled back to $5.25, our State will receive $20 million less in these revenues, a decrease which is extremely important since it concerns revenues used to finance our school system.

Finally, let us not forget the fact that thousands and thousands of plugged and abandoned stripper wells could be reactivated if the price of stripper oil is allowed to vary according to the laws of supply and demand. These wells are expensive to operate in relation to their production but they are an additional source of oil. I think it would be far wiser to make it possible to put these wells back into production instead of making it impractical to even operate many of those stripper wells that are now in production on a marginal basis.

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There is one reason why I will oppose this conference report and that is **section 104** of the bill which explicitly reserves to the President the sole power to institute nationwide mandatory coupon gasoline rationing.

I am strongly against rationing. This Sunday I listened to Mr. Simon of the Federal Energy Office discuss the rationing problem on a television program. He indicated that he does not feel that the President now has clear, undisputable authority to initiate rationing. I do not want to give him that authority now and, even if it becomes necessary, I want to have something to say about when, how, and under what procedures it will be placed into effect. I urge all of my colleagues to think about the fact that a vote for the conference report on S. 2589 is a vote for gasoline rationing and the bureaucratic nightmare which will be concomitant with it.

Mr. WHITE. Mr. Speaker, I have just returned from west Texas recently, and let me tell the Members what I found there. After we reduced the oil depletion allowance and made other regulations that forced oil producers to reduce their production, towns were being depopulated; rigs were dismantled; some oil wells were capped, and many drilling crews dispersed. Now that oil is severely needed by this country, the crews are beginning to come back; the rigs, when they can find them, are being set up; and some of the oil wells previously closed are being uncapped and put into production. I have been answering mail all morning pleading that Congress not reverse this development by rolling back the price of crude oil. **[Sec. 110.]**

I can assure the Members that production will fall if we roll back crude prices. Do not do this if we really want to produce oil for this country in order to alleviate our shortage. The independent oil producer who finds and produces 70 percent of our domestic oil will be most hurt by this disincentive.

Mr. MACDONALD. Mr. Speaker, I just have 2 minutes. I am not going to argue with anybody, but I do think that certain things should be straightened out, especially concerning prices. I just state what I know to be facts, that on May 15, 1973, the average price for domestically crude oil was $3.86 per barrel. That was just 9 months ago. That price included the stripper well and the new crude production as well as the so-called flowing oil. Today the price of flowing oil is ceilinged at $5.25. The price on new crude and stripper production as of now is $9.51 per barrel. In many cases the price is over $10 a barrel, an increase of 150 percent in just the last few months.

The market mechanism of supply and demand simply is not working in this case. We are not dealing with a free market structure, and our economy cannot any longer afford to pay the price.

I should like also to point out that the provisions of **section 110** require a rollback of prices on an average of between $5.25 and $7.09. That range obviously is broad enough to permit the President to establish prices which are adequate to induce production of additional crude supply and still keep prices from becoming really an unreasonable burden on not just our consumers for the home but also for our industrial production, so that we can try to avoid, perhaps, the oncoming recession.

For example, in December 1972, the National Petroleum Council reported to this Congress that, in order to achieve the greatest feasible

level of domestic self-sufficiency, the domestic price of crude oil would have to rise from $3.18 per barrel in 1970 to $3.65 per barrel in 1975. In August 1972, the Independent Petroleum Association of America testified that a domestic price of $4.10 per barrel would be adequate to assure the United States 100 percent self-sufficiency by 1980. While these projections were stated in "constant dollars," after adjustment, the National Petroleum Council's price would be projected at $4.35 and the Independent Petroleum Association of America's price would be increased to $4.55. It is to be emphasized that these price estimates are well within the national average ceiling price of $5.25 called for in **section 110** of the Energy Emergency Act.

Moreover, it should be kept in mind that this section permits the President to increase the ceiling price to levels which would result in a national average price of $7.09. This is well above the most recent projection of the Independent Petroleum Association of America calling for an average price of approximately $6.65 per barrel for crude oil in order to maximize domestic production by 1980. Let me point out also, that as recently as January 23 of this year Deputy Secretary Simon stated that the long term supply price of crude oil—that is, the level needed to bring supply and demand into balance and to eliminate the shortage—would be "in the neighborhood of $7 per barrel within the next few years." In Secretary Simon's words, any price higher than that creates "a windfall—a price to producers which is more than producers could have anticipated when investments were made and more than that required to produce all that we can in fact expect to be supplied."

Mr. HILLIS. Mr. Speaker, after carefully studying the conference report on the Energy Emergency Act, I am concerned that certain measures incorporated into this act will be counterproductive to the goals stated. I refer specifically to the provision for a price rollback. **[Sec. 110.]**

The price rollback is an unkind ruse on the American public. It promises a price reduction in oil products while, in truth, the long-term effect will be higher prices and more shortages. The price rollback will affect the small independent producers, those companies which drastically need a higher price in order to survive. By reducing the income of these independent producers, we shall reduce production and exploration for additional petroleum sources. The net result will be a need to import more oil from foreign countries at astronomical prices.

I fail to see how representatives of the people can propose and support this price rollback measure which is so deleterious to the welfare of our Nation. The damage of this provision is far reaching in that it may have the effect of postponing the passage of needed energy legislation.

The administration desperately needs responsible legislation which will enable it to deal more effectively with this crisis. Thousands of Americans are unemployed as a result of the lack of energy. It is urgent that we provide assistance to the people who are bearing the brunt of energy shortages. It is also urgent that we come forth with incentives to increase production of petroleum here in America rather than in the Middle East.

I strongly urge my colleagues to work for effective energy legislation. I also urge you to deplore the type of irresponsible measures, such as the price rollback, which are counterproductive and which delay the passage of responsible energy legislation.

Mr. ANDERSON of Illinois, Mr. Speaker, I think it is clear at this point in these proceedings that we are suffering very much this afternoon from the syndrome, as someone recently described it, or the attitude: "Don't just sit there, do something, do something even if it is wrong." And in the desire on the part of some in this House to convince the American people that they are making genuine progress toward a workable solution of the energy crisis, they are going to go ahead and pass this conference report notwithstanding the assurance that it is going to receive a Presidential veto which will not be overridden and which will therefore necessitate the Congress once again beginning the laborious process of working out the kind of bill that should be passed.

I want to say something else in brief reply to what the distinguished majority leader said earlier this afternoon when he participated in the debate, and incidentally I thank him for his more than generous remarks, but the sum and substance of what he had to say, was, yes, that the arguments the gentleman from Illinois has made are very good and they ring very well but the question in November is still going to be: Where is the gas and where is the oil?

I say to Members of the House they should not deceive themselves. When this conference report is passed, if and when it should ever become the law of the land, the question will still ring out: When or where are we going to produce the oil and the gas that we need to supply the energy needs of the American people?

This bill is not going to produce one single additional pint of crude oil for the American people. Quite to the contrary. When we build into our economic system the kind of disincentives—yes, disincentives—that are embodied in this artificial distortion of the pricing system, the pricing mechanism of our country, we are simply going to do what the gentleman from Kansas (Mr. Skubitz) and what the gentleman from Texas (Mr. White) and what numerous other spokesmen on the floor this afternoon have said will happen. We are going to discourage some of the small marginal operators from going out and making the additional effort and investing additional capital that needs to be invested to increase the total supply of oil in this country.

I further think we are really doing violence to the rules of this House and wiping out, as I said earlier, clause 3, rule XXVIII of our own rules when we adopt new matter entirely, as we are doing in this conference report.

I do not know how many Members have read pages 11, 12, and 13 of the conference report. I suppose there are almost 1,000 words of very technical and closely written and very sophisticated language there dealing with what is said to be a prohibition on inequitable prices. It is material that was never confided to the jurisdiction of a committee of this House, but rather new material that was written in conference, new material on which this House has had only the very briefest opportunity to even debate and discuss it this afternoon, because under the procedures we are following, when the motion to strike is offered

on **section 110** and the other objectionable sections of this conference report, there is no further debate. The only time that we have had this afternoon is the 60 minutes that was allotted under the rule for discussion of the conference report itself.

When I think of what the consequences of this action may be, when I think—and I use the term advisedly—"of the cynical, political, partisan, manipulation of the energy crisis" that this alleged roll-back represents, I think it is a travesty on the procedures of this body that we should undertake to legislate in this faulty manner on something fundamentally so important to the American people.

Notwithstanding the vote that took place a little while ago, earlier this afternoon, I hope that when the motion to strike is offered on **section 110,** the Members will yet take time to reconsider and vote in favor of the motion deleting that matter from this conference report.

Mr. STAGGERS. Mr. Speaker, I have listened to the debate and some of the arguments made. I would remind the Members that only 9 months ago the price of crude petroleum in America was only $3.86 a barrel, 9 months ago. It was adequate then. They said so, and since that time it has gone way up.

Why will wells suddenly be capped, as somebody said? Has anybody had any evidence or any hearings to show that? They are speaking out of fantasy, wild figures, grasping for something they do not know anything about. It was never testified before our committee.

So many are saying wild things. I cannot understand where they are saying that wells be capped because this bill permits amounts far above the $3.86 they were getting 9 months ago. Mr. Simon said on ABC last month $5.25 was all that was needed. I have that quotation exactly from the ABC, that he said that was enough.

We allow them for the stripper wells and independents to go up to $7.09, which was testified to by the Independent Petroleum Institute before the Senate, that $6.65 was adequate. We are allowing $7.09 to do the job.

I would read the testimony to the gentleman of Mr. Miller. He said that—

> Given todays prices of natural gas, the IPA analysis shows that an average price of about $6.65 per barrel on domestic crude oil would be required over the long run to achieve or permit self-sufficiency in oil and gas by 1980.

This is a long time ahead. This gentleman said it is enough.

I want to remind the gentleman again, that 50 percent of those wells are owned by the big petroleum companies.

Mr. HAYS. I just want to make the point, the more I see Mr. Simon on television the more I feel like if there is an energy crisis, it would go away if Mr. Simon would go away.

Mr. STAGGERS. Mr. Speaker, just want to say that this thing of saying that $7.09 is not sufficient, just is not so. Nobody has the evidence to show that.

I want to say again, the gentleman mentioned awhile ago about the price of propane going out of sight at 350 percent. This bill says it has to come down. We mentioned it specifically. **[Sec. 110.]**

If some Members go back home and cannot run their glass plants and plastic plants and so forth and they vote against this, how can they explain it? They cannot explain it. That is all I say.

This thing of the capping of the wells, I say again, where is the evidence? No one has shown us anything in any way.

Mr. STAGGERS. Let me ask this. Are the Members thinking of all the lost jobs, the jobless back home, caused by the fuel shortage?

Yesterday in West Virginia many thousand miners did not go to work because they did not have the fuel to get to work. What is going to happen in this State?

We are trying to resolve these things, these long lines in America, and we are asking for help.

We want to say that propane will be given to the farmer and to those that have to have it.

Gentlemen, just one further thing I would like to point out, that we are going to vote separately on **sections 110, 105, and 104.** Let us all understand this, and I would like to make this very clear, that if either one of these sections is deleted, the conference report goes down.

I would like to say, let us vote up all three of them and send the bill to the President and get on with the business of this country. Americans have waited long enough for an energy bill. I think the time is now, not next week. Let us not say, "Let's vote it down and come back later."

Members cannot explain to their people why they voted "no." I cannot go back into my district and say that I voted against something to stop the long lines at the gasoline stations and to make the price of gasoline reasonable once again.

This is the one thing I wanted to make plain, that if any one section of the bill is voted down, the whole bill fails. Members may say, "You can go back to your committee, back to conference." It would be months before we could come back, and I know the people of America would never understand this Congress. This Congress only received a 21-percent vote of confidence by the people, and if this is voted down, I would say that the people would have no confidence in the Congress of the United States; none whatsoever.

Mr. Speaker, we worked hard and long on this. There were good men on this conference, and I would put them up against any other Member in the House. There were at least two other committees on the Senate side, and they worked for many days and far into the night to come out with the conference report. I say it is the best we can possibly do. It would not matter how many more months we would debate it; how many more months in committee or in conference, so I say at the present time it is our only objective, our only hope to do something for this land. There are a lot of people who have come to me and said that they want to help the people who use propane. Now is the time to help them. There are a lot of people who say, "We want to know what resources there are in America, what fuel resources there are."

If the Members want to know, vote for this bill. It says that within 60 days they must report back to the Congress and tell us what the fuel supplies are in the country, where energy is coming from, where supplies are coming from, and where they are going. **[Sec. 124.]** At that time we will move and we can make a judgment, but at the present time we are in the dark and we do not know what is going on.

Mr. Speaker, I urge approval of these three sections.

Mr. DINGELL. Mr. Speaker, one of the landmark provisions of the conference report (H. Rept. 93–793) on S. 2589, the Energy Emer-

gency Act, is **section 124** which is entitled "Reports of National Energy Resources." For the first time, the Congress has established a mandatory system for full disclosure of information on reserves, production, distribution and use of petroleum products, natural gas and coal. This will for the first time give the executive branch, the Congress, the States and, most importantly, the public an opportunity to know the true facts about these essential resources and the shortages which now affect our country. For too long the companies dealing in these resources have hidden the facts from the American people and from the government under a heavy and tight veil of secrecy, misinformation and partial information.

Mr. Speaker, I sponsored this section in the House on December 14, 1973 (See Congressional Record, daily issue, pp. H11384–H11387). The House adopted it unanimously. It was unanimously accepted by the conferees without change—and I will note that for a brief time I was one of those conferees.

The objective of the section is as stated: that is, to provide "reliable," which means truthful, data to the new Federal Energy Administration. The basic objective of the section is that the information be fully available to Congress, the States, and the public, and it is the intention of Congress that this section be construed by the FEA, the courts, and other Federal agencies in such a way as to provide maximum information to achieve this objective. It covers all "reserves, production, distribution, and use of petroleum products, natural gas, and coal." The term "petroleum products" is defined in **section 102(3)** of the act.

To further this objective, the section directs the FEA to "promptly" publish implementing regulations in the Federal Register. The term "promptly" was deliberately chosen by me to insure that FEA will act with utmost speed to publish these regulations. Since the Administrator, Mr. Simon, has been fully cognizant of this provision for several weeks, I would consider it to be dilatory and not in compliance with this requirement if the publication of the proposed regulation is delayed more than 45 days after the law is enacted. The Congress showed its intention to have these regulations become operative quickly, by the provision allowing only 30 days between publication and final adoption.

The proposed regulation will apply to all persons—as that term is defined in title I, United States Code, section 1—including but not limited to subsidiary and parent corporations and brokers, who are "doing business in the United States"—as that term is defined in **section 102(3)** of the act—and who, on the date of enactment, "are engaged" in exploring, developing, processing, refining, or transporting by pipeline, any petroleum product, natural gas, or coal, either in the United States or in some other country, or both. The clear intent of the language is full disclosure. This intent should not be allowed to be defeated by gimmicks or other means.

The regulation will require "detailed" written reports every 60 calendar days to FEA on:

First, all known reserves of crude oil, natural gas, and coal wherever located, including estimates of such reserves, that are owned, leased, or otherwise subject to control, wholly or partially, or jointly, by such persons.

Second, the production and destination of any petroleum product, natural gas, and coal. This will enable FEA and the public to know more precisely how much of each of these fuels is being produced or mined over a 60-day period, who is going to use them and for what purpose, where they are stored, including fuels stored under bond, and who is stockpiling the produced fuels;

Third, the refinery runs for each product; and

Fourth, such other data as the Administrator deems necessary to help him achieve the purposes of this section. This provision gives him broad authority to carry out his duties under this and other laws effectively and efficiently. I expect to use this authority for the purpose of obtaining and providing to the public "maximum" and "reliable" information as directed by this section.

The regulation is not only prospective, but also requires similar reports covering the past 4 years—beginning January 1, 1970—so that we will have a base bank of data with which to evaluate the adequacy and accuracy of future data. This provision should be extremely important. [Sec. 124.]

All data in the reports furnished to the FEA must be truthful. If any person willfully and knowingly falsifies, conceals or covers up any material fact or makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing it contains any false, fictitious or fraudulent statement or entry, he will, of course, be subject to a fine of up to $10,000 or imprisonment for up to 5 years or both, pursuant to title 18, United States Code, section 1001.

Section 124 requires that four times each year FEA shall publish in the Federal Register "a meaningful summary analysis" of the reported data. This is an important feature. It is designed to inform the public and the States fully in an understandable manner. Such summaries should not be brief. They should be fully informative. They will, of course, contain much technical information. But even technical documents can be written so that they are understandable.

The reporting requirements of this section [Sec. 124] will not apply to retail operations, such as service stations. But this term "retail operations" should not be construed so as to defeat the purpose of the section. For example, the Washington Gas Light Co. should not be required to report how much gas is used by each and every one of its residential customers. But it should be required to show, at the very least, how much gas goes to all or the largest consumers in its categories of residential, commercial, and so forth, customers in each area.

If a person is already reporting some or all of the required data to another Federal agency, such as the Geological Survey, he may obtain from the FEA Administrator an exemption from duplicating the reporting of such data to the FEA. But in such case the other Federal agency must make the data available to the FEA. The burden will be on the person to show to FEA that the required data is, in fact, being fully reported by such person to another Federal agency and FEA must verify this fact, before an exemption is granted. Any exemption granted shall continue so long as the data is supplied to the other agency and the other agency makes the data available to FEA. The

existence of the exemption and the basis therefor shall be made known to the public.

The reporting requirements shall be enforced by FEA by such means as it deems appropriate. If FEA requires court assistance to help enforce these reporting requirements, FEA is authorized to invoke the enforcement provisions of **sections 119 and 120** of the act and the Federal courts are specifically authorized to enforce the reporting requirement.

Section 124 recognizes that there may be some instances in which the reports or some of the information in the reports obtained under this section should be kept confidential. It therefore incorporates the provisions of 18 United States Code, section 1905 which provides protection against disclosure of trade secrets and other proprietary information.

However, **section 124** does not grant blanket confidentiality to the reported data. To obtain confidentiality, the person reporting the data must make a written "showing" that confidentiality is warranted because disclosure would "divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person," and the Administrator must be satisfied that confidentiality is, in fact, warranted.

It is intended that FEA grant confidentiality judiciously and only after a clear showing that it is warranted. Of course, even this limited confidentiality blanket will not apply to any person or agency to whom the Administrator has delegated any of his responsibilities for carrying out the Energy Emergency Act. Nor will the confidentiality blanket apply to the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the General Accounting Office when the data is needed by any of those agencies to carry out its "duties and responsibilities" under this new law or other laws. I emphasize that it is the responsibility of each of the latter agencies to determine which and how much data the agency needs to carry out its duties and responsibilities. The FEA Administrator is not authorized to second-guess any of these agencies or to deny its requests for any data it deems it needs.

Thus, for example, the GAO would be granted access to the data in carrying out its functions of review and evaluation of FEA operations, including audit and examination of the FEA's use of Federal funds, or as part of its investigative functions which are performed for Congress or its committees or Members. The clear objective of this requirement is to allow access to GAO so it can verify all data pertinent to its responsibilities.

The data would also be available to Congress or any committee thereof. The committee chairman on his own initiative or pursuant to the direction of the committee can request and obtain this data.

Mr. Speaker, if this section is effectively utilized, much of the public skepticism that hangs heavy over the present fuel emergency could be lifted. I hope Mr. Simon realizes this and will use it effectively.

At this juncture, I insert a letter which I have today received from Mr. Simon concerning this section and an accompanying January 18, 1974, statement by Mr. Sawhill which he presented to my subcommittee:

FEDERAL ENERGY OFFICE,
Washington, D.C., February 19, 1974.

Congressman JOHN D. DINGELL,
House of Representatives,
Washington, D.C.

DEAR MR. DINGELL: In reply to your letter of February 11, 1974, we regret that our communication of January 23, 1974 was not completely responsive to your letter of January 2, 1974.

We sincerely regret this occurrence and appreciate the opportunity to furnish the additional information you require.

Regarding the question you raised concerning the compromise version of section 124 of S. 2589, it must be understood that this version was worked out on the Senate floor and the FEO had no time to develop an official position.

As Mr. John Sawhill, Deputy Administrator, advised in his opening statement on January 18, 1974 before the Small Business Committee, the FEO supports both the intent and general thrust of the original provisions.

We realize the need for better data and that the FEO is the agency which should collect it. However, we believe there are some changes which would be appropriate. These changes are detailed in Mr. Sawhill's statement (copy attached).

We are in the final stages of developing proposals which will incorporate these changes and which we believe will satisfy the goals of section 124. As soon as these proposals are finalized, members of FEO will be available to discuss them with you or your staff.

I am attaching copies of tables containing the information requested in your January 2, 1974 letter.

We are currently studying your comments regarding the composition of the FEO Advisory Committees and will furnish you our views by separate letter in accordance with conversation with your staff.

If you require additional information, please contact us.

Sincerely,

WILLIAM E. SIMON,
Administrator.

JOINT TESTIMONY BY HON. JOHN SAWHILL, DEPUTY ADMINISTRATOR OF THE FEDERAL ENERGY OFFICE, AND GERALD PARSKY, EXECUTIVE ASSISTANT TO THE ADMINISTRATOR, SMALL BUSINESS COMMITTEE, JANUARY 18, 1974

Mr. Chairman, thank you for the opportunity to appear before you today to discuss our energy data requirements.

The Arab embargo will reduce our petroleum supplies almost 14 percent below expected demand. Some have questioned the accuracy of these estimates. I welcome the opportunity to address the credibility of our estimates, the sources of the data we use in making them and our plans to improve our energy information capabilities.

While many doubt the accuracy of the data being provided by industry, there is no doubt in my mind that we do indeed have a serious shortage. Consumption this year is expected to reach over 19.1 million barrels per day or an increase of 1.5 million barrels per day over 1973.

This growth represents a continuation of the historic trends in demand growth. Domestic production on the other hand leveled off in 1971 and has been steady or declining since. We have had to make up the difference between demand and domestic supply with imports * * *.

NEW LEGISLATION ON ENERGY REPORTING

While we have sufficient authority to mandate the petroleum data we now need, I still feel that specific mandatory reporting legislation is required. First tailored sanctions and enforcement provisions may be more appropriate than those in our current authorities. Secondly, expansion of mandatory reporting to other energy sources, such as coal and uranium, is a necessity in the months ahead and may not be practical under our existing authorities.

We are now developing the information needed to propose specific mandatory reporting legislation. Such legislation will go beyond information on petroleum inventories, imports and refinery operations. The more complex problems of reserves, and nonpetroleum products will be included.

Let me briefly comment on the basic provision of section 124 of S. 2589 which was considered before the recess. There have been widespread reports that FEO was either against or substantially weakened the provision. Let me say now without reservation that we support both the intent and general thrust of the original provisions. We need better data; it should be collected and FEO should be the agency to collect it. However, there are some changes which we feel are appropriate.

First, section 124 would require comprehensive reporting from the energy industries once every 60 days. I feel we need more frequent information for certain categories of data—such as inventories of key fuels during a shortage—and probably less frequent information in other areas, such as reserves which do not change significantly on a month-to-month basis.

Secondly, retail operations are exempt from reporting under section 124. I feel we may well need the authority for spot checks or statistical sampling procedures, if we are to deal with problems such as hoarding.

Finally, the section also requires FEO quarterly reports. I feel that quarterly reports are insufficient. Right now we are reporting weekly to the American people and would intend to continue to do so during this crucial time.

PUBLIC DISCLOSURE

A central issue, and one which is very important, is the extent to which the information which is reported to us ought to be made available to others. The public has a right to complete and accurate information on the energy situation. This policy should give way only where limitations are imposed by statute and where important public policy considerations dictate otherwise.

For example, there will undoubtedly be national security constraints upon the release of certain information about military fuel supply levels. Further, competitive considerations will dictate confidentiality in cases where disclosure of future production or shipment plans could be used for anticompetitive or predatory purposes. We will be conferring with the Justice Department and Federal Trade Commission on the antitrust risks involved in disclosure, on a company-by-company basis, of certain sensitive commercial information. But I would expect these limitations to be relatively narrow and that most of the information would be more widely available.

Both the government and the public are entitled to much more information about the petroleum industry than is now available. We intend to see that it is gathered and made available. To this end, we will be presenting proposals recognizing three categories of information disclosure. The first will be that information generally available to the public; second is that information which should be available only to other government bodies with a legitimate interest in and need for the material; and, third, that information which ought properly to be limited to FEO in the carrying out of its responsibilities. I believe these proposals will mitigate concerns about excessive confidentiality, and will greatly broaden public acceptance of the information which the government collects and publishes on this subject.

SUMMARY

In summary, the Federal Energy Office fully intends to get all the information needed to do our job and fairly present the facts to the American people. We have already made substantial progress in our energy data systems. Under the authorities we now have, we will implement mandatory reporting requirements for the petroleum industry. And, under authorities which we are now evaluating, and would hope to work closely with Congress in finally formulating to develop the broad-based energy information systems needed not only to deal with our current problems but with the challenges in the decade ahead.

Mr. Speaker, Mr. Sawhill makes several points concerning **section 124** which I believe deserve comment.

First, I am pleased that FEO supports "without reservation both the intent and general thrust" of **section 124** and the concept that FEA should collect this data. I think that is encouraging.

Second, Mr. Sawhill suggests that reporting of "detailed" data more frequently than 60 days may be necessary for such purposes as obtaining data on "inventories" of key fuels during a shortage. I do not think

section 124 precludes this. But I point out that FEA has adequate authority under the Emergency Petroleum Allocation Act of 1973 to obtain such data.

Third, Mr. Sawhill suggests that FEA may need authority "for spot checks" of retail operations "to deal with problems such as hoarding." Here again I believe FEA has adequate authority in the above cited statute to deal with this problem. I have some difficulty believing that service station operators could hoard much fuel.

Fourth, Mr. Sawhill indicates that quarterly reports to the public "are insufficient" and points out that FEA is reporting "weekly" to the public and intends to continue this practice.

The weekly reports should be continued. However, they do not suffice for the more detailed quarterly reports required by **section 124.** Such weekly reports are generally given by FEA through press conferences. **Section 124** requires a far more comprehensive report to be printed each quarter in the Federal Register where it is more widely available for critical analysis by the public.

Fifth, Mr. Sawhill notes, on the issue of confidentiality, that "there will undoubtedly be national security constraints upon the release of certain information about military fuel supply levels."

I agree with Mr. Sawhill's comment, but it is my expectation and I feel sure it is the expectation of Congress, that the "national security" label not be used loosely to prevent the publication of data whose publication will not actually endanger the national security. Subparagraph (1) of title 5, United States Code, section 552(b)—the Freedom of Information Act—provides adequate protection for the confidentiality of information which the President has specifically required by Executive order "be kept secret in the interest of the national defense or foreign policy." However, I want to make it plainly understood that the Energy Emergency Act will in most cases conflict with, and therefore it will clearly override, the exemption contained in subparagraph (9) of 5 U.S.C. 55(b), which heretofore exempted from disclosure under the Freedom of Information Act "geological and geophysical information and data, including maps, concerning wells." This exemption has been used to justify the withholding of information about reserves and production of oil and gas, and it is precisely this very withholding practice which **section 124** of the Energy Emergency Act was expressly and directly designed to change and prevent.

Sixth, Mr. Sawhill then states:

> Further, competitive considerations will dictate confidentiality in cases where disclosure of future production or shipment plans could be used for anti-competitive or predatory purposes. We will be conferring with the Justice Department and Federal Trade Commission on the anti-trust risks involved in disclosure, on a company-by-company basis, of certain sensitive commercial information. But I would expect these limitations to be relatively narrow and that most of the information would be more widely available.

The provisions of **section 124**, including 18 U.S.C. 1905, adequately deal with the confidentiality of commercial information, such as trade secrets and proprietary data. The considerations suggested by Mr. Sawhill appear to go back to the very thing that **section 124** seeks to prevent, namely, the granting of confidentiality for all manner of reasons under the guise of encouraging competition or preventing

some unidentified antitrust risks. **Section 124** is clearly intended to preclude such sweeping use of confidentiality.

Mr. KEMP. Mr. Speaker, we are—once again—considering the proposed National Energy Emergency Act. This legislation has bounced back and forth between the floor of the Senate and the Joint House-Senate Committee of Conference like a tennis ball during the 2 months. That action would have been amusing, were it not for the gravity—the seriousness—of the problem this legislation is allegedly intended to help resolve.

Of the many important measures to come to this floor for action since I began service here, this one has distressed me the most.

This bill is a cumbersome piece of legislation. It tries to do everything within the confines of its pages. This is an approach which will "lock into concrete" our immediate present perception of the problem. Yet, as these perceptions change—as they surely will—the old perceptions will remain, nonetheless, the law of the land. And, Congress has seldom moved with the speed and versatility of the people and a free economy.

This bill would, also, give the Executive powers so broad as to be of questionable constitutional validity.

It embodies a significant threat to the free market economy which provided adequately all the peoples' needs for fuels before Government began interferring with the market structure.

It discourages production, rather than encouraging it, at a time when it should be obvious that the most effective way to alleviate the shortages is to increase production of fuel supplies.

It sets into motion a mammoth, new Federal interventionist program which will produce endless regulations, countless forms, thousands of tax-consuming Government jobs, and power brokering not always necessarily in the public interest.

And, it will perpetuate the "horrows" of the energy crisis—high prices because Government price setting is artificial—that is not based on the realities of supply and demand; long lines at the gasoline stations because Government policies do not allow adequate production; threats of strikes and dangers of plant shutdowns as competing interests—forced now by Government policies to view each other as threats to each's livelihood—brow beat the decisionmakers. This crisis has already resulted in the loss of jobs and incomes, in production line closings, in countless shortages in other industries, in loss of tax revenues, in violence, and even in death.

It seems to me, measured against this factual background, that the Congress should seek genuinely to remedy the crisis—not to continue it for whatever purpose—refusing to postpone longer that day when the market system is restored for the benefit of the people.

I have addressed the House on a number of occasions since the Yom Kippur War in October 1973 and the subsequent imposition of the Arab oil embargo. I had spoken a number of times, even before that war broke out, on what was about to happen in the energy field unless the Congress acted promptly to remove disincentives to production, and I had introduced bills to help meet that objective. This crisis had been brewing for a long time—well over a decade—as demand continued to mount but production leveled off.

I consider the debate over the price of fuels **[Sec. 110]** to be among the most important aspects of the bill before us. Unfortunately, because it effects directly the consumers' pocketbooks, the debate over pricing policies has tended toward immediate, political solutions, rather than crucial, long-term economic solutions. And, this is an economic problem. In a quest for perceived advantages at the voting booth this fall to be supposedly had by holding prices down to levels wholly unrealistic to today's supplies and demands, we run the high risk of discouraging production, perpetuating Federal interventions continuing shortages, and paying more—much more—over the long run.

Why do we hear so much about allocation? About rationing? Especially when both are but temporarily remedial solutions—perhaps, illusions—to the real solving of the problem? Because it is the Government's political answer to keep the prices from going up—maybe even from going down.

The price mechanism is the only instrument the Government could ever use that will handle a million variables an hour, that will enable New Yorkers to buy gas from California when New Yorkers have too little gas, or to reverse the process without having to go through a maize of Federal regulations and approvals when New Yorkers have too much gas and want to sell it. Decontrol of petroleum prices is the only solution which will work, and I think it will be the ultimate one used. Unfortunately, that may be after the Government has produced fiasco after fiasco, failing each time to reckon with the reality that the market system works more efficiently and effectively than does Government regulation.

Will decontrol—deregulation—result in soaring, outrageous prices? According to an editorial commentary in Barron's of February 18, the answer is "No." Enough return on investment to reinvest in badly needed capital improvements with which to explore, recover, refine, and distribute fuels is needed and should be allowed. This will result in more realistic and higher prices than we were paying a full year ago. Beyond that, major suppliers compete for increasing their respective shares of the market—they try to win consumers over to buy their products. How? By lowering the price, so that their products are more attractive to those consumers—in other words, cost less. Enforcement of antitrust and price-fixing laws must be active to insure this, for such antitrust as price-fixing actions are as antithetical to a market system as are Government's arbitrary and mandatory controls. Name an example? Barron's cites the experience of Western Europe since the Yom Kippur War.

When the Arab nations announced their embargoes, every nation feared the worse. As in the United States, the democracies of Western Europe established allocation and rationing systems. Long lines formed, tempers flared, prices soared. How did those governments first deal with the crisis? By imposing more controls and more regulations, by allocating and rationing, by shifting supplies around, and by drawing down reserves? Such policies did not work. Then, what was done? They abandoned rationing and other futile devices and allowed the market price to prevail. As a result, the Continent already has restored the balance between supply and demand. Life is, once again, somewhat normal.

What about price? On the average, prices rose by about 38 percent. If this holds true here, the top rate would be about 42 cents for regular and 55 cents for high test. This is less than is being paid today at most pumps. Then prices should start to steadily recede.

Only in America, thanks to controls and our Congress penchant for getting its nose into everything and calling such intervetion "leadership," are we now "blessed" with continuation of the problem.

What about those who say that the time is not now right for removal of these controls?

The fact is that the time is never right to abolish controls, if one is trying to avoid totally the short term rises in price which will inevitably result immediately after their removal. This happened in 19474 after the wartime controls were lifted. But that is shortsighted. After the immediate rise—and this is not speculation, it is fact—the laws of supply and demand begin to take effect, reflecting accurately their interrelationship. Prices then start to decline, as they did after 1947; production starts upward, and so forth. All that we do by keeping these oppressive controls is postpone the day in which we must lift them or risk the total destruction of our economic system.

There is an unfortunate tendency in public life: A tendency to think the people will believe you are really doing your job only if you are doing something very visible, very vocal, very news worthy. Thus, one's quality of performance is erroneously equated with the amount of one's publicity-oriented ventures. Nothing could be further from the truth—the diligent, countless hours of homework performed by Members, away from the glare of the lights, the hum of the cameras, the ink of press releases. Yet, this quiet leadership often holds the best answers for really resolving issues before the Nation.

Speaking to a member of the other body before a recent hearing, Secretary of the Treasury, George Shultz, rightly observed:

> In the stampede for "action, action, do something," you find yourself doing the wrong thing.

That is true of both the leadership of the administration and of the Congress, for it is a reflection of human inadequacy when emotion controls reason, when political exigencies are given priority over conviction and the truth.

There are those who cry out against what they call a "do nothing" Congress, when on some issues, like this one, the public interest might be much better served if the Congress did adopt a handsoff policy, not "do-nothing" in the sense of abandoning responsibility but rather a "do-nothing" in the sense of consciously recognizing and appreciating the fact that by doing nothing in the way of imposing controls, regulations, and statutes, we might be doing a lot to remedy the problem. Government policy fostered this chaos; by removing such policies, we will go a long way toward removing the chaos too.

I have a somewhat different attitude about the Federal Energy Office and its Administrator, William E. Simon, than others. I think Bill Simon is one of the most capable, dedicated, and intelligent men in this administration. No man could have gone as solidly and as far in the private sector as he did in his relatively few years in business without "having something on the ball." And, I believe the vast majority of FEO regional and headquarter administrators, managers, and em-

ployees are dedicated, sincere, and willing to work endless hours to help resolve energy problems. They certainly have always tried to help me help my constituents.

But, that's the bulk of the problem. The problem is inherent to using Government policy and a Federal agency as a substitute for the dynamism of the American people and their economy.

No matter how hard FEO strives to resolve one crisis, another crops up; and, it will always be that way. Statutes, regulations, and rules cannot be a substitute for the mechanics of a diverse economy—an economy which has produced the prosperity we have always heretofore enjoyed in this land.

As an example of such an agency's inability to deal with a problem of this magnitude, not as a reflection on FEO or its leadership, let me read from a recent column:

From the outset, despite the considerable talents of its Administration, FEO has been plagued by one snafu after another. Barely a week after opening its doors, the Office erroneously announced cutbacks of 25% in the production of gasoline, a figure which it later in embarrassment changed to 5%. Again, in choosing 1972 as the base period for allocations, regulator and regulated alike inevitably have fallen afoul of regional differences and local quirks. Because it launched its own voluntary program of conserving energy a year ago, Oregon, for example, used relatively less petroleum than the other 49 states; hence its allocations were lower and its shortages worse. In New England, where ski resorts have had a bad season, service stations are awash with gas. Fearful of a scarcity of heating oil, FEO ordered refineries to maximize such output at the expense of gasoline. Now everyone has more of the former than he can use and not enough of the latter.

Legalities aside, the mischievous impact of the allocations program is painfully clear. Under its strictures, crude must be diverted to inefficient, antiquated and even obsolete capacity. One refinery blessed by an FEO quota has been closed for over a decade. In consequence, as Gulf argues, "the nation will have less gasoline, heating oil, petrochemical feedstocks and other petroleum products." Indeed, by reducing the incentive of surplus and deficit refiners alike to import costlier foreign crude—a barrel of oil commands several more dollars abroad than in the U.S.—the program virtually mandates perennial shortage. In recent weeks, according to the American Petroleum Institute, oil imports have dropped sharply; if the bureaucrats and lawmakers, in unholy alliance, succeed in rolling back domestic oil prices, as they threaten, things will go from bad to worse. Townsend-Greenspan & Co., economic consultants, recently observed, "Our current shortages seem to be developing largely from (1) our suppressing prices below world levels and (2) our allocating machinery. If we fumble our way into gasoline rationing, the problems will be of our own making and not attributable to the Arab boycott."

The consumer, through his exercise of individual choice, collectively creates demands which are met by supplies. The interaction of producer and consumer results in a price. That is so very simple. The use of this system has produced the most productive economy in the history of the world—ours. And we did it without Federal regulations, red-tape, and bureaucracy. The sooner the Government gets its nose out of the people's livelihood, the better off the people—and their Government—will be.

The House should reject this conference report and make a decision on each of the meritorious measures in this bill by voting on them separately.

Mr. FRENZEL. Mr. Speaker, after long consideration last December, I decided to support the conference report on the emergency energy bill, even though I believed that it contained major flaws.

As I would have voted for it then, I shall vote for it now because there is no alternative. When Congress adjourned in disorganization in December, we chose the alternative of nothing. Nothing is a poor alternative. A flawed energy bill was better than no energy bill in December, and it still is.

The **title II** deferral of air standards is absolutely necessary so the FEA can mandate reconversions of utility plants back to coal, or prevent conversions from coal to other sources. Our overall energy strategy is totally dependent on this alteration of air standards for stationary sources. **[Sec. 119 CAA.]**

Also in that **title II** is authority to defer auto standards for at least 1 and probably 2 years. Further, the EPA, in making determinations for the second year, must take fuel economy into consideration. **[Sec. 202 CAA.]**

Title II alone is enough reason to vote for this conference report. Without it, Congress will have done nothing to prevent serious economic disruption and possible danger to the health and safety of our people.

Title I is primarily a grant of power to the President to carry out conservation policies with certain safeguards. Its major flaw is that it grants rationing authority to the President without the safeguard of a congressional veto. **[Sec. 104.]** That is a useful safeguard. At a time when we mourn the erosion of congressionnal powers, it is hardly appropriate to grant such sweeping power without some sort of legislative braking device. Other conservation programs are subject to congressional veto. The bill is already under criticism for reversing the traditional executive and legislative roles. Even so, I think the executive policymaking and the legislative veto can be justified in the name of "crisis" or "emergency." Most of us agree that rationing should be a last resort and that the power to make a timely determination on rationing is better vested in the executive branch. But to exempt the rationing power from legislative veto is a real copout. The Congress should have maintained its veto as a matter of legislative prerogative.

As a practical matter, the President, through FEA Administrator William Simon, is probably less likely to impose rationing than the Congress. A further practical consideration is that the whole thrust of **title I** is to encourage fuel conservation other than rationing. The FEA Administrator has said he will use the authority of this bill to try to avoid rationing. The critical period is the first quarter of 1974. If we can survive this quarter, we may avoid rationing. That should have been a pretty good incentive to legislate these authorities in December.

There are other flaws. The worst is the oil price rollback. **[Sec. 110.]** Its terms may seem generous today, but it freezes into law a rigid price inflexibility which almost certainly will inhibit oil production. How could Congress approve a counterproductive law at a time when everyone agrees we need more production?

Surely we need price controls. Nobody is for unjust enrichment. But we do have price controls now. Fortunately they are flexible. If we are silly enough to make them rigid by statute, we will only be recreating in oil the beef shortage of last year. Price controls, yes.

Windfall profits tax, yes. But never statutory, counterproductive rollbacks.

The unemployment compensation feature [Sec. 116] is untidy, and I am not sure that all working people can be protected. Some unemployment generated by energy may be difficult to prove. I believe we ought to have a single program that is fair to all working people. But here, again, we do have time to improve this section by other legislation.

We have required too many studies in this bill. Both Houses called for studies of every item they did not know what to do with. The conference seems to have approved most of them. I only hope we do not waste the resources of the FEA on all these studies. [Sec. 301.]

In general, flaws can always be found in legislation of this complexity. But I think the people expect this Congress to act. This Congress failed the people when it went home for Christmas without passing the emergency energy bill. I can find lots of things wrong with the bill, but I could not justify a negative vote in December, and I cannot now. The people wanted action in December. We failed them then. The people want action now.

I voted "No" on the previous question so we could vote on the three items in dispute. A yes vote on the previous question would have killed the bill. I could not vote for that.

I will vote against two of the three disputed features, but in any case I shall vote for the bill. The Congress owes the people some action.

Mr. Ichord. Mr. Speaker, The gentleman from Louisiana and I have asked the question but still have not gotten the answer detailing in what fashion the legislation before us today will result in the production of additional oil. It is my intention to vote against this legislation because I see in the measure several provisions which will deter the production of oil. I fear that this legislation will guarantee the rationing of gasoline in the future for the American consumer.

Oil in the United States is now in serious short supply and the actions of oil producing Arab States have prevented the importation of sufficient supplies to bridge the gap between demand and supply.

I have no sympathy for the large oil companies. They are responsible in part for the situation in which we now find ourselves, just as Government, both the executive and the Congress, as well as the American consumer must share a part of the fault. However, I feel very strongly, Mr. Speaker, that by this measure we are departing from the principles of the American free enterprise system. The action we are taking today could very well mean the beginning of the end. We have followed in this Nation from its very inception a system of production and distribution based upon the laws of supply and demand, price, profit and competition. It is not a system which always works with perfection. In fact, one of its imperfections is that it has had a consistent tendency, until Government started to tinker promiscuously with the system, to overproduce. Why, my friends, in this emergency situation, when we face a shortage of supply do not we use this system which has the best track record of production, to overcome a shortage of supply. If this conference report is adopted and signed into law by the Persident, I perdict we will have frozen the United

States into a permanent condition of domestic underproduction. We will have put politicians and bureaucrats directly into the business of the production and distribution of oil and the end result will be chaos. I cannot in good conscience cast my vote other than in the negative.

Mr. WRIGHT. Mr. Speaker, every Member of this House would like to solve the energy shortage. If there were just some magic wand someone could wave to dispel the shortage and to turn on a spigot of unlimited fuel, we would be falling over one another to get our hands on that wand and wave it.

But let us not aggravate the disease in a clumsy effort to treat its symptoms.

The disease is a shortage of petroleum in the face of ever increasing demand. The price of petroleum is an uncomfortable symptom of that disease, but it is not the disease.

There are intelligent and effective ways to treat the disease. But rolling back fuel prices is not one of them, however politically attractive it may presently appear. **[Sec. 110.]**

Such an approach is not only superficial. It could be tragically counterproductive. It easily could result in less pertoleum rather than more.

Up and down the east coast, our citizens already are suffering the harassing indignities of long waiting lines at the fuel pumps. What ultimate good would it do them to reduce the price by a few cents a gallon if in the process we doubled their waiting time?

What we desperately need is more oil. We get this only through exploration and discovery, and then through expanded refining capacity.

Seventy-five precent of all domestic oil and gas has been discovered not by the giant companies but by independents, relatively small companies operating on borrowed capital and at high risk. Eight out of every nine exploratory wells have been dry holes.

Most of the shallow strata have already been explored and exploited. Most of the remaining oil would seem to lie in deeper strata, which means higher drilling costs.

Do we encourage the high-risk venture of exploratory drilling by reducing the price of the product? Of course not.

Like many of you, I have been appalled at the recital of statistics showing a few big integrated international companies enjoying increasing profits while the rest of us sweat in line to buy gasoline.

But the rollback here proposed would hurt those companies less than it would hurt the independents, the very ones on whom we are relying to find more oil.

If you want to vent your wrath upon unjustified profiteering, then draft some reasonable language barring excess profits.

Or draft a law requiring all profits in excess of a previous level to be reinvested in exploration.

Or put a severance tax upon the exploitation of these exhaustible resources and channel the proceeds back into the finding and development of new sources, as some of us have proposed.

But let us not in a fit of pique kill all the goslings because the goose hasn't laid more eggs. For that's the way to have even fewer eggs—or none at all—in the future.

I will admit that this move to roll back prices has a superficial political attraction, but it could be extremely shortsighted.

Some of you think you are slaying a dragon in the dark of night, but it could turn out to be the family cow. And its ghost could return to haunt you for your lack of vision.

Mr. WYLIE. Mr. Speaker, I would like to explain my vote to strike **section 110**, the provision which would roll back crude oil prices.

This is the second time around for this conference report and the conferees have added a new controversial section authorizing the President to roll back and set prices on petroleum products. Any price reductions for petroleum must be passed through for a dollar to dollar basis to the consumer.

Here we go again taking the Alice in Wonderland path of bureaucrats and politicians attempting to manage an essential segment of the economy. Legislating lower fuel prices for the American people—How can anyone be opposed to that? Everyone knows how the pocketbook has suffered from the energy crunch, and the people have a right to demand relief. Consequently, **section 110** of the amended conference report will peg the price of so-called "new" and "stripper well" crude oil at between $5.25 and $7.09 per barrel. Currently, these two categories of production are uncontrolled; and the market brings about $10 a barrel. The price of "old" domestic crude is already controlled at an average of $5.25 per barrel. Under the present price control, 76 percent of domestic crude is controlled and 24 percent is uncontrolled, **section 110** is aimed at the 24 percent category.

It is very tempting for those of us in politics to support a proposal considering the current mood of the public. It is therefore essential that such a proposal be given a rational analysis. The issue basically hinges on the broad question of the effect of past Federal attempts to regulate by bureaucracy the workings of the market economy. In this context it is important to remember that in a Government-controlled economy prices and production levels are not determined by business-consumer decisions based on a supply and demand situation. Under economic controls prices and related decrees are essentially political decisions instead of economic decisions.

The difficulty with control is that a truly efficient economy must necessarily be regulated by market decision based on products supply and consumer demand. When politics ventures into the market, gross distortions are introduced into the economy that would never have occurred under the discipline of market forces.

A classical example is the recent independent truckers' strike which never would have occurred if the Government was not in the business of regulating freight rates and fuel prices. The regulations here involved appeared to be a good idea designed to protect the public's interest. In actual operation, however, they drove a major segment of the Nation's independent small businessmen to the brink of bankruptcy.

Shortages of beef are again predicted in the near future. Why? Well, in the not too distant past, retail food prices especially beef shot up rapidly. The Government responding to political pressures clamped on controls to allegedly protect the consumer. While these prices were rising, farmers started increasing their herds to cash in on what appeared to them as an improving market for beef. As soon as price con-

trols were imposed, a lot of these ranchers decided that the incentive to expand their herds was no longer there and they cut back on beef in order to channel their assets into more profitable agricultural endeavors. Growing a steak is not like manufacturing toasters, and the production rates cannot simply be turned on and off at will.

A beef shortage was caused by Government policies which were attempting to solve the very problem which the Government helped create. In short, it becomes a rather vicious cycle.

The Congress has enacted wage-price control authority so that the President can regulate the economy. We are now somewhere in phase IV of said controls. Have they worked? A look at the accelerating rate of inflation since controls were first implemented under phase I provides the obvious answer. What the controls have caused in this period is twofold. One result is an expensive bureaucracy with the inevitable redtape recordkeeping and reporting costs imposed on the business community. Second, there were a number of serious economic dislocations suffered by numerous segments of the economy because wages and prices were being determined by "politics" instead of market forces.

And now, the same dreamers who believe that the State is capable and competent to do all things, are pushing for the same economic regulatory practices on crude oil. Will we ever learn the dismal lessons of past experience in this area? Is there any remote reason to believe that total price controls on crude oil and related products will somehow be effective this time, that there will be no serious economic dislocation, that the bureaucrats and their regulations will be more effective than the disciplines of the marketplace. In my judgment, this is a very dangerous provision and I will vote to strike it. [Sec. 110.]

The price rollback provisions are totally unrealistic when viewed objectively and should be defeated.

Mr. GILMAN. Mr. Speaker, I applaud the work of the committee in reporting this energy bill from Conference with many of the House provisions intact.

I was particularly concerned about **section 112** of the conference report, "Prohibitions on Unreasonable Actions," and am pleased with the committee's clarification of that provision.

My concern reflects the disrupting effects our energy shortages have brought to bear on many small industries throughout our Nation.

One sector of our economy, the decorative lighting industry, has been particularly hard hit. As a result of the Federal Energy Office release of December 11, 1973, in which the Administrator called for a ban on "promotional, display and ornamental lighting of homes and apartments," the decorative lighting industry has experienced severe imbalances in business operations.

One small business engaged in the manufacture, sale and distribution of Christmas lighting in my own district, the Leco Electric Co., Inc., of Florida, N.Y., has provided my office with financial data which verifies a drastic reduction of sales since the FEO release.

While we all recognize that energy shortages call upon each of us to sacrifice to weather the storm, major disruptions to some small industries emphasize the critical burden shortages have created in some sectors of our economy.

For this reason I am pleased that the conference report clearly states the committee's legislative intent with regard to **section 112**. Accordingly, I include the following section of that report in this portion of the Record:

The Committee has added a separate section to this legislation creating a statutory standard of reasonableness to be observed in the allocation of refined petroleum products and electrical energy among users or in taking actions which result in restrictions on use of such products and electrical energy. The Committee intends the term equitable to be applied in its broadest and most general sense. As such, the term denotes the spirit of fairness, justness, and right dealing. No user or class of users should be called upon during this shortage period to carry an unreasonably disproportionate share of the burden. This is fundamental to the traditional notion of fairness, and equal protection. The Committee expects the President and the Administrator of the Federal Emergency Energy Administration created under this Act to assidiously observe these requirements in conduct of their functions.

This language is very clear in its intent. While the decorative lighting industry is more than willing to make reductions in their production and assume their fair share of the burden of our crisis, it is totally unfair to ask this portion of the economy to bear the full brunt of the shortages. The language cited above evidences the committee's recognition of this inequity.

I appreciate the fine work of the committee and am pleased to support the passage of this bill.

Mr. GRAY. Mr. Speaker, I first want to commend my friend and neighbor the distinguished gentleman from West Virginia (Mr. Staggers) and all of the Members of his committee on both sides of the aisle for working so long and hard to resolve a complicated problem concerning the energy crisis. With so many divergent views I know everyone in Congress has agonized over how best to resolve the energy crisis by providing an adequate amount of gasoline, heating oil, propane and other oil products at reasonable prices.

Answers to these questions are not easy and I think the conference report now before us will help but certainly is not the total answer to meeting the energy crisis.

Mr. Speaker, we need to have better cooperation from the oil industry on supplying the Government with true and accurate figures on just what oil is on hand and what their total capability is for supplying the needs of the American people in the future. The figures given us so far do not square with the present facts. For example, we are told by the oil companies that all imports from the Middle East amounted to only 13 to 15 percent of total consumption of gasoline and other products in this country. The administration including the President recently announced that the American people through their car pooling, elimination of pleasure driving, and other conservation measures have reduced consumption by 20 percent. If we can believe these figures, then we should have 5 percent more gasoline on hand than we had before the Middle East oil embargo and therefore we should see no lines at service stations. We know this is not correct, therefore, where is the problem? Are the oil companies deliberately holding back their supplies in order to force higher prices? If so, the amendment in this conference report rolling back prices **[Sec. 110]** will only add insult to injury.

Therefore, Mr. Speaker, I intend to vote for the conference report to give the President authority to deal with this crisis but I plan to vote to strike the rollback provisions for two reasons; First, the President will veto the conference report with this provision in the bill and therefore we will have no legislation at all; second, the Middle Eastern countries are now charging $15 per barrel for crude oil and if you force a price rollback to $7 a barrel in this country, how many oil companies do you believe will pay $15 a barrel or even $10 after the embargo is lifted and then turn around and sell the oil to the independents and others for half price.

I want cheaper gasoline and other fuels for my people in southern Illinois and across the Nation but we have seen what controls have done to the entire American economy. It has caused shortages in many commodities which in turn inevitably causes higher prices. What we need to do is make more oil available through increased exploration, conversion of coal to gas and conserve fuel wherever possible. Price controls 2 or 3 years ago across the board would have worked along with wage controls. However, at this late date, piecemeal approach to price controls is unworkable with oil or any other commodity. The price of gasoline will automatically come down when we produce more than we are using. When the oil embargo is lifted and we find new sources of oil in this country, as we can and will, the Arab nations will then roll back their prices in fear of losing their customers. Right now they have us over the oil barrel, as it were. I have many independent oil producers in southern Illinois who are willing to invest their high risk capital in exploring for new oil reserves, however, they must have a free market as a proper incentive. We also have a number of power and gas companies interested in joining the Federal Government in a partnership arrangement to build coal to oil conversion plants in southern Illinois. Mr. Speaker, we have over 150 billion tons of minable coal reserves in my congressional district, more than any other State in the Union. We are ready and willing to help solve the energy crisis. The best way to do it is to take the shackles from all segments of this industry and put them in the arena of competition, thereby letting them exemplify the American tradition of seeing "who can get there firstest with the mostest." If we vote for the conference report, we will be giving the President some additional tools to deal with the energy crisis on an immediate basis and if we vote against the rollback, we will see more gasoline, no lines at service stations, and in the long run much cheaper prices.

Mr. Donohue. Mr. Speaker, I very earnestly urge and hope that the great majority of this House will accept and approve this Energy Emergency Act conference report now before us.

In approaching our voting decision on this conference report, let us calmly and patiently remind ourselves that no human instrument can be perfect and that no legislative action can be entirely satisfactory to everyone involved.

On this score, let us further remember and emphasize, in our action here today, that effective response to a national emergency in the overall national interest is the very highest obligation of the Congress and it is our additional high duty to insure that necessary sacrifices

in a national emergency are equally imposed on every group and sector within our American society.

Mr. Speaker, it is only too clear that existing energy shortages with their attendant confusion, aggravation and disruption of everyday American life has brought our average citizen practically to the breaking point of personal patience. It is only too clear that the energy crisis has accelerated the inflationary spiral and is visiting even more extreme financial hardships upon already overburdened millions and millions of American workers and their families and particularly our older citizens.

It is only too clear that the energy emergency is solely responsible for vastly increasing unemployment for millions of Americans. It is only too clear that increasing numbers of our citizens are daily questioning the ability and determination of the Congress to effectively act on their behalf at a time of national emergency.

This conference report is a reasonable overall compromise of most of our varying convictions and it presents us all with a timely opportunity to answer the question about our ability to act and to resolve the growing doubt about our paramount concern for the national interest.

In effect the approval of this report will constitute a first step toward the eventual solution of this agonizing energy supply problem. In summary, the adoption of this bill will provide for a freeze on domestic crude oil prices, a rollback, after 30 days, of crude oil prices that are not now subject to control, to offset windfall profits, and a pass-through to consumers of any resultant reductions in fuel cost. It will expand imperatively needed unemployment assistance and require compensation to be paid to all persons who become unemployed as a result of the energy crisis. **[Sec. 116.]**

It will also grant standby authority to the President to initiate gasoline rationing if necessary; instruct certain electric utilities to switch from oil to coal **[Sec. 106]**; provide franchise protection to gasoline dealers **[Sec. 111]**; require major oil companies to disclose information about reserve supplies, price structures, and operating practices **[Sec. 124]**; establish antitrust review action **[Sec. 114]**; permit the President to raise the price of oil on the condition that such action will stimulate new oil production and research **[Sec. 110]**; temporarily suspend the limitation on stationary or motor vehicle fuel emissions **[Title II]**; and authorize low interest loans to homeowners and small business to assist in improvement projects designed to conserve energy. **[Sec. 130.]**

Mr. Speaker, as I previously indicated, this conference proposal is by no manner of means inherently perfect nor fully satisfactory to each one of us. For instance, I and many others feel that the fuel price ceiling established in this report is still too high for the average consumer's pocketbook but it is a step in the right inflation control direction while we continue to work for further and more realistic price reductions. Also the opportunity for the oil companies to extract excess profits is not completely eliminated and it does generate some justifiable concern about restrictions.

However, Mr. Speaker, I believe that, in its entirety, the adoption of this report will initiate imperatively needed government action to alleviate a great many of the hardships and discomforts that have

been inflicted upon this Nation by the sudden energy shortages and it will provide vitally needed assurance to the average American that the Congress is truly concerned about his welfare and determined to find solutions for the short- and long-term problems associated with this energy crisis. Therefore, I hope that the conference report is resoundingly adopted by the House today while we plan and work for even more effective legislative action to enlarge our domestic energy production sources and establish our everlasting independence from political pressure threats and caprices of foreign supply sources.

Mr. HORTON. Mr. Speaker, today is another sad chapter in Congress' pitiful response to an energy crisis. President Nixon has said recently that we no longer have an energy crisis, but an energy "problem." I do not agree with the President on that score, but just think what that says of the Congress. We have seen a crisis come and go and all we have been able to do is reduce highway speeds and return to daylight saving time.

I will not recount my frustrations with getting congressional approval of bills creating a Federal Energy Administration and an Energy Research and Development Administration. There is no good reason why those crucial bills should not have become law many weeks ago. But today we must concern ourselves with the emergency energy legislation, a long-overdue product in its own right.

Unfortunately, the conference report before us contains so many questionable provisions that the veto stamp is poised for action. Granted, as the legislative branch, we should not succumb to veto threats and merely pass bills that are totally acceptable to the administration. But surely we could have done a better job of keeping this bill free of provisions which are of dubious merit and which should be resolved in separate legislation.

The price rollback provisions in **section 110** of the conference report are a case in point. Rolling back prices sounds good to the American consumer whose fuel costs are soaring along with everything else. They have tremendous political appeal. But they are a hoax. They do not solve the problem and they will probably make our fuel situation worse.

In the first place, as much as five-sixths of the oil consumed in this country would not be affected by the rollback. About a third of our oil comes from imports and no act of Congress is going to change the prices being charged on foreign crude oil. The oil producing nations are exhibiting tactics which are nothing short of extortion and they can only be dealt with through diplomatic channels. In addition, about two-thirds of the oil produced domestically in the United States is now under price controls at levels equal to or below the rollback level, and the rollback would have no effect on this oil. That leaves the so-called new oil, the new discoveries and the small, marginal stripper wells. These are the very sources we must encourage if we want to increase domestic production and become less dependent on foreign oil. Our experience with price controls should have taught us by now that people do not produce goods at a loss or at a low rate of return on investment.

I would agree that the current uncontrolled price for new domestic crude is probably excessive, and that new exploration and production

could be encouraged by a somewhat lower price. However, the $5.25 rollback ceiling price that would be imposed by this provision of the bill is so low, by comparison to the current price, that it could seriously endanger our ability to develop new domestic sources. I must oppose the setting of artificial prices which would discourage domestic oil production and only compound our problems. If we want to act in the true interest of the consumer, we should concentrate our efforts on preventing the oil companies from profiting excessively. A windfall profits tax, with plowback provisions to encourage increased investment and research, is the proper vehicle to prevent the oil companies from getting rich on the sacrifices of Americans.

Mr. Speaker, I will also vote to strike the rationing provisions of the conference report. **[Sec. 104.]** I am not against rationing should it become necessary as a last resort and I am adamantly opposed to placing a tax on fuel or any other scheme that uses economic disincentives to reduce fuel use. But the rationing authority provided in this legislation offers no opportunity for congressional input or veto. The President could implement any plan he wants to. He should not have that blanket authority. Rationing, if it comes, will change the lives of every American and their representatives should have a voice in it.

Mr. Speaker, I expect the rollback and rationing provisions to remain in the conference report. I will vote to send the bill to the President despite my concerns with these provisions. Congress must get a bill to the President's desk. We have delayed far too long. The administration cannot continue to cope with the energy crisis by Executive order. This conference report appears to be our only hope of getting congressional authority and guidelines to the White House.

Mrs. BURKE of California. Mr. Speaker, I would like at this time to clarify briefly the intended scope and purpose of **section 206(d)** of the Emergency Energy Act.

This section of the bill was offered as a floor amendment by Congressman John Anderson on December 14, 1973, in behalf of Congressman Glenn Anderson and myself. It was originally introduced as a separate bill in the House by Congressman Glenn Anderson and myself with over 30 cosponsors and was entitled the "West Coast Corridor Feasibility Study Act of 1973." It was introduced in the Senate by Senator Tunney, who succeeded in getting it adopted in the Senate last July 11 by a unanimous vote.

I know that in passing the Emergency Energy Act, the Members of this body recognize the vital and real need to begin now to develop a plan for a high-speed ground transportation system linking the major cities of the west coast—a system that will insure fuel savings, promote the economy of the region, and provide our citizens with an effective and efficient alternative to the automobile and airplane as a mode of transportation.

In conducting this study required in **section 206(d)** of the bill, the Secretary of Transportation is directed to evaluate and analyze a number of factors, including but not limited to the efficiency of energy utilization, the cost and the impact on the economy of the region. In addition, it is intended that the Secretary will evaluate and analyze those factors listed in the Senate-passed version of the West Coast Corridor Feasibility Study Act of 1973, S. 1328. These factors include—

The various means of providing such transportation, including both existing modes and those under development, such as the tracked levitation vehicle; the environmental impact of such a system, including the future environmental impact from air and other transportation if such a system is not established; the factors which would determine the future adequacy and commercial success of any such system, including the speed at which it would operate, the quality of service which could be offered, its cost to potential users, its convenience to potential users, and its ability to expand to meet projected increases in demand; and the ability of such a system to be integrated with other local and intrastate transportation systems, both existing and planned, in order to create balanced and comprehensive transit systems.

In carrying out the investigation and study pursuant to this act, the Secretary of Transportation should be permitted to enter into contracts and other agreements with public or private agencies, institutions, organizations, corporations, or individuals, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

These are not by any means an exhaustive list of the factors which the Secretary will evaluate, but they are intended to identify the desired nature and scope of the study. Now is the time, in the legislation before us, to recognize the need to undertake a national effort to update our national transportation system to achieve our national goal of fuel conservation and greater development of public mass transportation systems.

Mr. BIAGGI. Mr. Speaker, I rise in opposition to the rule as proposed which will allow consideration of the emergency energy bill conference report. We cannot afford to permit this vital legislation to fall victim once again to a parliamentary quagmire which could consume the bill once and for all.

The rule proposed today will allow points of order to be raised against **sections 105 and 110** of this report which could eliminate these sections without even the benefit of a vote by the representatives of the people. Such key provisions as the rollback in crude oil prices—and emergency energy conservation plans are essential to the development of viable solutions to our present energy dilemma. Let us not be afraid to bring these matters to a vote, let the American people know our positions on key energy issues.

This Congress has already been the butt of much criticism as a result of procrastination and inaction on this important legislation. We cannot allow this poor record to continue. How much longer do our gasoline lines have to get before we act responsibly? I say the time is now to act. Let us begin by defeating this unfortunate rule.

Mr. HANRAHAN. Mr. Speaker, because our country is facing this serious energy crisis today, and because it is becoming difficult for some of us to reach our place of employment, or warm our homes, I will vote to support the Emergency Energy Act. I think the Nation desperately needs decisive legislation in this area without further delay.

However, I would like to go on record as being strongly opposed to the language in this bill which bestows upon the President and the administration of the Federal Energy Office the power to ration gasoline. **[Sec. 104.]** My opposition is based on the same reasons I first cited: Statistics have proven gasoline rationing would cause unemployment to skyrocket; and the multitude of individual appeal cases that

would need immediate attention would create an unworkable flood of red tape. Our lifestyles have not been set up to run on 9, 10, or 15 gallons of gasoline a week, and any attempt to force this rationing could be disastrous to millions of Americans.

In spite of this unbending opposition to gas rationing, I shall vote to pass this emergency energy bill considering the benefits we do stand to gain from the legislation.

Mr. BURKE of Florida. Mr. Speaker, I want to voice my objections to the bill before us—S. 2589—and to the bewildering array of amendments that this body, and the other body have become enmeshed, with the result that it delays coming to grips with the energy crisis.

Frankly, I must admit that I am frustrated and angry and I can well understand the angry frustration of my constituents who daily obtain inaccurate information and rumors regarding the availability or nonavailability of crude oil and gasoline supplies. It does not help matters any either to heap onto this conflicting information, complicated parliamentary manuevers, and unlimited amendments.

When we considered S. 2589 before for several days last December, it was a foregone conclusion that nothing workable could come out of the prolonged floor fights. Although I favor debate on major issues, yet the time and place to write legislation is not on the House floor with 435 Members expressing 435 different views as to what must be done, and the offering of numerous amendments thus resulting in the final legislation becoming a crazy quilt of do's and don'ts that confuses even the diligent bureaucrat who is called to administer—or I might say try to bring order out of bewilderment.

It is exasperating to even try and explain so little accomplishment. I am aware of the complexities of the present energy situation but it is our responsibility as representatives of the citizens of the United States to honestly investigate and ascertain the true facts, and then recommend reasonable actions to help alleviate the widespread shortages of gasoline and other petroleum products.

Many of the debates in the Congress are only mere words, and people want helpful action and not rhetoric. They want gasoline. They want heating oil. They want petrochemical products. We all know that many jobs are dependent on adequate supplies of these materials. My job, for example, as the elected representative of the 12th Congressional District of Florida, is made almost impossible by the present situation. I have had to miss scheduled appointments, because I had to wait in long lines to get to a gas pump to buy enough gas to drive to the Capitol. Last weekend, I had a difficult time getting a reservation on an airplane to my district, due in part to the cutback in flights made by the airline because of the energy shortage. When I got to the district, it was difficult to get around because of the severe gasoline shortages there.

The situation is not only exasperating but almost intolerable to the citizens of our country without us belaboring it further with continual debate on a poor piece of legislation.

It seems to me that we must exercise more discipline in our procedures so that legislation that comes to the floor of the House can be handled in an orderly and sensible manner sufficiently so that we will know when the voting is over, just exactly what we have done and that we passed an honest workable bill. Vital problems that our Nation

today faces deserves the fine legislative brush strokes of an artist, not the wild, unrestrained strokes of a house painter. It is true that it is hard for a body as diverse as is the House of Representatives, to act in concert, but it must be done. It is the responsibility of both Houses to work in concert with each other without involving itself in politics if we are to solve the energy problems that plague us today. We, who represent the people, owe this to them.

Mr. Nix. Mr. Speaker, I rise in support of the conference report and the emergency energy bill. While this bill will obviously not satisfy everyone on all counts, it does take several major steps in the right direction. Perhaps the most important step is the rollback of exorbitant price increases that the administration has allowed for nearly a third of all crude oil produced in this country. **[Sec. 110.]** These price increases have placed unnecessary and intolerable burdens on American consumers. The rollback provision in this bill will allow adequate incentive for more oil production while preventing windfall profits at the expense of the American people.

I am also pleased that this bill contains several other positive features, such as the requirement for energy companies to report accurate information to the Federal Government concerning their resources and production, the extension of unemployment benefits for workers who have lost their jobs due to the energy crisis, new protection for franchised retail dealers, and antitrust safeguards.

Of course passage of this bill will not end our responsibility to deal with the energy situation. I have introduced, along with many of my colleagues, several bills designed to deal with the long-term energy crisis. I believe we must consider several areas of possible legislation, including the tax structure of the energy industry, monopolistic practices among the giant multinational oil companies, the lack of adequate energy information, and the role of the Federal Government in developing energy resources on Federal lands.

Mr. Hanley. Mr. Speaker, at this time I wish to make an inquiry with regard to the conference report of the Energy Emergency Act (S. 2589) which is now pending before this body.

I have noted that the purposes of this act, as set forth in **section 101(b)**, are "to call for proposals for energy emergency rationing and conservation measures," and to authorize specific temperary emergency actions necessary to meet the fuel needs of the United States. These purposes must be fulfilled "in a manner, which to the fullest extent practicable: maintains vital services necessary to health, safety, and public welfare."

In my position as chairman of the Subcommittee on Postal Service of the Committee on Post Office and Civil Service, I have become increasingly aware of the necessity for the Postal Service and its contractors to receive the fuel they need to deliver the mail in a prompt and efficient manner. There are few services which touch our constituents as frequently or as regularly as that provided by the U.S. Postal Service—the collection and delivery of some 90 billion pieces of mail each year. It is essential to the well-being of the Nation that those who provide this service be given sufficient fuel.

When the Emergency Petroleum Allocation Act of 1973 was pending before this body several weeks ago, a similar inquiry was made

with regard to that legislation during the floor debate. I believe you remarked that it was the intention of the committee that the movement of the U.S. mail by the Postal Service was a priority in the allocation of fuel, and that the term "mail delivery," which was contained in the committee report (93–531) at page 18, included the movement of the U.S. mail by the Postal Service, its lessors, rural carriers, contractors, and air carriers.

Mr. Speaker, as I understand **section 101(b)**, of the Energy Emergency Act and its relationship to **section 104**, entitled, "End-Use Rationing," and **section 105**, entitled "Energy Conservation Plans," any regulations promulgated pursuant to the aforementioned sections, which codify the purposes of this act, must provide, to the fullest extent practicable, for the maintenance of vital services necessary to health, safety, and the public welfare.

In view of our action on the Emergency Petroleum Allocation Act of 1973, and the statements made during the consideration of the Committee report on the House floor which specifically included the movement of the U.S. mail within the act, am I correct in assuming that the committee intends that the term "vital services" in **section 101(b)** of the Energy Emergency Act includes the collection, transportation, and delivery of mail by the U.S. Postal Service, its lessors, contractors, and carriers?

Mr. MOAKLEY. Mr. Speaker, once again the House is forced to vote on a crucial measure; one that affects each and every American.

Too often, however, bills such as this come up with laudable intentions, yet the purposes which these bills are intended to serve immediately are frequently outweighed by necessary but more long-term goals.

This bill is a case in point.

I can therefore rise only in reluctant and reserved support for the measure.

As I said earlier, the bill's intentions are noble. But it is not enough. The American consumer must be given some relief. He has suffered long enough at the hand of the major oil companies and the actions of a seemingly uncaring and incompetent administration. The relief that this bill would provide him is minimal.

I am confident that more effective legislation could be written.

Such new legislation must include the basic ideas of this bill, but must go deeper, to get at the heart of the problem in the most efficient manner.

Such new legislation must attack the question of a price rollback on domestic crude oil. The current bill, designed to combat an "artificially high" price of crude **[Sec. 110]** would allow the President to set a ceiling of $7.09 per barrel on some crude, and $5.25 per barrel on the rest. Is this also not artificially high? In January of 1973, not really so long ago, the price of domestic crude was $3.40. Oil currently sells for above $10 per barrel. The rollback suggested in this bill would provide the consumer with only a 1- or 2-cent saving at the gas pump. This simply is not enough.

Opponents of the rollback argue that such a price decrease eliminates the incentive which oil producers have for exploring and drilling new wells. If the current increase of nearly 300 percent has not elicited

any new supply, how can we believe that a 200-percent increase will do the same?

I thus am reluctant about the rollback provisions in this bill. It simply does not curb the windfall profits which oil producers are reaping. It simply does not give the consumer adequate and immediate relief.

A second major point which this bill does not adequately serve is of the environmental problem. By authorizing another delay in the timetable for achieving effective emission standards for automobiles **[Sec. 202 CAA]** the effort the Congress has made in this area would suffer an extreme setback. Further, the bill would extend in some cases for 5 years pollution requirements on certain powerplants and industries. **[Sec. 119 CAA.]** The previous effort which the Congress has made on the environment front must not be so undermined. Effective legislation can be written so as to help the energy problem, and not make our people suffer from unclean air.

I am thus not satisfied with this bill. It sacrifices too much which the American people need so desperately now.

However, this bill, while certainly not perfect, is at least a start. It at least begins to tackle this enormous problem.

Finally, it shows that the Congress is dynamic, that it can respond to the needs of the American consumer when the administration cannot.

I therefore lend my reluctant support to the conference report as it stands.

Mr. MURPHY of New York. Mr. Speaker, as originally reported out of the House Interstate and Foreign Commerce Committee, this Emergency Energy Act contained three amendments of mine, added to different sections of this bill, which would have extended to our educational sector a priority classification in any energy conservation plan or gas rationing system. My reasons for introducing these three amendments were, in principle, rooted in what I consider to be the vital role education plays in our social fabric. I felt then, and always will, that education supplies one of the principle underpinnings to political, social, and economic cohesion in America. I felt that I was not only catering to the needs of education. My motives grew out of the conviction that I was only fulfilling the rights of education, as perceived by me, commensurate with its role in the United States.

As passed by the House, the Emergency Energy Act contained these vital amendments. I pointed out to my colleagues, during debate over these provisions, that the November 27, 1973, edition of the Federal Register had published a series of modifications to the mandatory allocation program for middle distillate fuels, which did not give education a fair shake. Section 2 of these regulations had defined "vital community services" in such a fashion that education was not included. What were listed as "vital community services" constituted priority categories. Thus, these regulations implied that education would receive its allotment only after the needs of the priority users had been met. This was unacceptable.

Unfortunately, the first joint House-Senate conference elected to strike out priority listings. It was my understanding, however, that it was the firm intent of the conferees that education be extended top priority in whatever conservation plans or gas rationing systems might

be put into effect. They had decided to abolish priority categories for other reasons.

I understand that the Federal Energy Office Mandatory Fuel Allocation Regulations, which went into effect in mid-January, gave our Nation's schools the place of high importance which they deserve and I am very pleased about that.

The distinguished chairman of the Committee on Interstate and Foreign Commerce knows that a general purpose of this act and the Mandatory Petroleum Allocation Act is to protect the public welfare and maintain all essential public services. In this connection, I ask the chairman of the committee about the intent of this measure with regard to education. It is my impression that the intent of this measure is not intended to result in a forced closing of schools, and that the educational process and schools will continue with a minimum of disruption.

It is my understanding also that the conference report language, coupled with the House record on passage of the Emergency Petroleum Allocation Act, insures that education will be treated as a vital public service whenever priorities are established under section 4 of the Emergency Petroleum Allocation Act.

May I also bring to the attention of this body an amendment to this bill, introduced by me in committee, which will permit New York State to import electricity from Canada. It is my firm conviction that anyone familiar with the dire problems New York State is facing in regard to energy will concur with me in the emphasis I have placed on such action.

The next phase of the New York State Power Authority's construction program includes fossil and/or nuclear baseload facilities to serve the Metropolitan Transportation Authority, a second pumped storage plant also in part for the use of MTA and high voltage transmission lines to connect those projects to the State grid and to connect our St. Lawrence hydro project to Quebec and to reinforce its connection via Utica to the Niagara project. Those transmission lines will make it possible to import from Canada each summer beginning in 1977 a minimum of 800,000 kilowatts of power which during 7 months of the year is surplus to Canadian needs.

The new facilities which will be used to import Quebec power will be subject to very thorough review by the New York State Public Service Commission pursuant to article VII of the public service law. The Public Service Commission will examine every possible environmental consequence.

In order to import the power, the authority plans to construct a 765 kilovolt transmission line from a point on the international boundary between the State of New York and the Province of Quebec approximately 2 miles east of the village of Fort Covington, N.Y., to a substation located near the authority's St. Lawrence power project and thence to a substation near Utica where it will connect with the New York statewide transmission system. The transmission line will be approximately 150 miles in length. The arrangement with Hydro-Quebec will result in a very substantial net importation of electric energy into the State of New York thereby resulting in substantial savings of fossil fuel resources which would otherwise be used to

generate the power within the State of New York. Also, of significant importance, this project will improve the air quality within the State in areas where the power would otherwise be generated by fossil fuels. If the minimum 3 billion kilowatt-hours of electric energy to be imported through the border connection were to displace an equivalent amount of gas turbine generation, the savings of petroleum resources would amount to at least 7.8 million barrels annually. Since the agreement with Hydro-Quebec provides that additional amounts of energy can be imported, the savings of petroleum resources could be even greater. All of the electric energy imported through the border connection will be sold within the State of New York, primarily within the New York City area. I consider this provision to be of critical importance to New York State.

May I also take this time to stress, very briefly, the value of this Congress encouragement of public usage of mass transit facilities in combating this energy shortage. **[Sec. 206.]** We are all aware of the vital necessity of seeing to it that the people of America wake up to the importance of their utilizing mass transit. This will be of direct benefit to this Nation as it attempts to combat this energy crisis. It will also contribute to the continued and habitual use of these facilities so that our long-term needs are met. We all have a responsibility at this time, despite the fact that this is an emergency bill, to look ahead. In this vein, I introduced, and the House adopted, an amendment calling for Federal planning and studies of ways mass transit usage can be encouraged.

I oppose rationing. However, since this bill is designed to give the President the flexibility necessary to imposing a rationing system, if he sees fit, I am in favor of the President's having this domain of authority. Under the provisions of this Emergency Energy Act, Our President will be able to declare the necessity for a rationing system, draft a specific policy formula in this regard, and impose it. He will have the responsibility to decide when such a measure is called for. He will have the responsibility for implementing it properly. He will also have the responsibility for its consequences. **[Sec. 104.]**

As the problems involved within this energy crisis multiply, with the concomitant public outrage, certain recent discoveries startle me. Why are American citizens waiting for 3 hours in line at service stations to buy gas while 214 million gallons of gas are in storage? Is the public supposed to accept this fact in a hands-down manner? While immersed in acute shortages of energy fuels, why is propane being flared in New Jersey because it abounds in excess? Are there not certain dimensions to this energy shortage that need clarifying if a responsible course of action is to be followed?

The first step in meeting this monster is to intelligently delineate the respective areas of responsibility for those involved. The Federal Energy Office should not have a monopoly on decisionmaking with regard to the distribution process. It does not have the expertise and wisdom to merit such power. Let the Federal Energy Office cooperate with the oil industry. The oil companies know the real problems involved in distribution. They have a wealth of experience here. The Federal Energy Office, no matter how good its intentions,

lacks this. A rational balance must be found in order to adequately work out these difficulties.

The Federal Energy Office might have the genuine capacity to rule in the area of pricing. The Office does have experienced, knowing personnel in this sector. It might be able to unilaterally handle this. But not in the distribution field. Let's bury the illusions and pursue a program of sound public policy.

Mrs. HECKLER of Massachusetts. Mr. Speaker, prompt passage of emergency energy legislation is essential.

Each day, millions of Americans are forced to wait for hours in line to get gasoline for their cars. Mothers have to watch their children trudge off to school in darkness each morning and pray they make it safely. Hundreds of thousands of people are losing their jobs because of the energy crises.

The people cannot wait any longer for their leaders to respond to this crushing problem.

The Energy Emergency Act (S. 2589) before us is a start toward resolving our short-range energy problems. However, this bill contains a great many serious shortcomings.

For example, in Massachusetts unemployment was at about 7 percent before the full impact of the energy crisis was felt. In Fall River, in my 10th Congressional District, the jobless rate was 9 percent. These figures could go even higher before the crisis reaches its peak.

To assist workers who lose their jobs because of the energy crisis, the Energy Emergency Act (S. 2589) offers little help. A paltry $500 million would be divided among the 50 States, and benefits would be provided for 6 months to a year. **[Sec. 116.]**

This is outrageous. Unemployment benefits should be continued for as long as they are needed, for as long as we have the crisis. And we cannot even get officials of this administration to agree on how long that will be.

The bill does contain provision for low interest loans to homeowners and small businessmen to stimulate installation of storm windows, insulation, and more efficient heating units as a step toward long-range conservation of energy. **[Sec. 130.]** As you know I cosponsored such a measure H.R. 11615, along with 13 other of my colleagues, on November 28, 1973.

I am disappointed, however, that the basic contents of the Energy Reporting and Information Act on which I am currently working have not been included. With the passage of this energy bill the American people must continue to depend on oil company figures as the major source of energy data. Approval of such self-reporting is totally irresponsible. The Federal Government desperately needs an objective means of obtaining verifiable energy data. Provisions for such information-gathering are not found in this bill.

The gasoline price rollback **[Sec. 110]** outlined in this legislation is a first step toward fairer treatment of the consumer. Increasing gas prices and never-ending lines at the pumps are infuriating the American public and rightly so. Excessive oil company profits appear to be lifted right out of the consumer's pocket. Such excesses cannot be tolerated.

This bill leaves a great deal to be desired. I regret that it cannot be amended. However, the American people have a right to expect their

leaders to act swiftly. They have waited in mile-long lines, sent children to school in the dark, and paid skyrocketing home heating fuel bills for weeks. Congress must act and must act now.

Mr. CULVER. Mr. Speaker, I am supporting final passage of the conference report on the Energy Emergency Act, even though in my judgment, the bill shows all the earmarks of the tremendous pressures brought to bear on the conferees in November and fails adequately to address the emerging problems as we now perceive them near the end of the winter season.

It is no disparagement to the conferees to say that they have been subjected to tremendous time and lobbying pressures, and have labored under the severe handicap of not knowing the true dimensions of the problems they were asked to remedy. The perhaps inevitable reaction has been to hand over excessive power to the administration and the industry, in the hopes that emerging information would allow for meaningful congressional oversight. I believe we must pledge ourselves to redress this imbalance through an ongoing and carefully deliberated legislative program.

What is needed, as I see it, is first to collect the necessary energy information and then to develop fully matured legislative proposals in each of the interrelated areas that bear on both short-term and long-term remedies. I have myself set forth an agenda for such action in a special order that appeared in the Record on February 7. The conference report does not preclude our acting on such an agenda, and the Federal Energy Administration Act will provide a solid institutional foundation for our doing so when we act on that bill. Thus, although I have serious misgivings about the conference bill now before us, I am hopeful that it will be administered with restraint until such time as we can come up with better solutions.

I am not at all satisfied that the emergency authorities conferred on the President by this bill are justified by any current necessity. We are very nearly through the winter, we have managed to avoid any serious heating-oil shortages, and I am not happy at all with the idea of Federal bureaucrats ordering schools to close or regulating office hours by decree. We should make clear our intent that decisions on these matters should be taken largely by private individuals and by State and local authorities. The 15-day congressional veto by itself is unlikely to provide an adequate check on excessive bureaucratic zeal.

The price rollback provisions of this bill **[Sec. 110]** are a considerable disappointment. They would fix all domestic crude prices at a national average of $5.25 per barrel, yet give the President an essentially ununreviewable discretion to raise these prices to more than $7 a barrel if he finds that it is needed to balance supply and demand and is not "inequitable." This is really buckpassing, and we know what is likely to happen because the administration is publicly committed to a long-term $7 price—which I consider and even the National Petroleum Council has conceded to be far too high. Under the bill, even "old" oil from non-stripper wells could be removed from its present price controls, although there is no justification whatever for doing so. Higher prices are certain to be "inequitable" to specific classes of consumers—particularly the poor, the elderly, and those on fixed incomes—yet the President could determine that such higher prices

should prevail. Clearly this is one area that the Congress must closely monitor and revisit at the earliest opportunity.

The environmental [Title II] and antitrust [Sec. 114] aspects of the bill are similarly disturbing. Fidelity to principle is professed, but in practice significant degradation of environmental and competition goals is made possible. Here, too, we need to move beyond emergency reactions to well-considered legislation confining the discretion of the administration and the industry.

I am voting for the bill because it does provide us with the only present opportunity to authorize end-use rationing. [Sec. 104.] It seems to me that we have reached a point where rationing may well be needed to assure smooth and equitable distribution of available fuel supplies. What we have now in many areas are lengthening lines of motorists with shortening tempers, and skyrocketing prices for certain essential fuels like propane. The Federal Energy Office is meeting these problems with a blizzard of press releases but no effective action. It takes political courage to recognize realities and impose unpopular remedies, and I think we are right to insist on that kind of courage rather than allowing the President a continuing opportunity to escape it.

Having said all that, I must confess that I think we have labored long enough on emergency legislation and that the thing to do now is to put it behind us and get on with the unfinished energy agenda that confronts us. It is with that definite objective and on that understanding that I have determined to vote "yea" on final passage of the conference report.

Mr. Cleveland. Mr. Speaker, if those of us who are opposed to the rationing section in the conference report are unsuccessful in having it removed, I intend to vote against the bill. Colleagues may recall that I voted for the measure when it first came before this body, though with considerabe reservations. I can only say that my misgivings have intensified in the period since.

My principal objection relates to the standby powers to impose gasoline rationing, which were rewritten in conference. This represents another abdication of congressional responsibility in two respects: First, it vests a great deal of arbitrary power in the executive branch at a time when the Congress has otherwise been exhibiting some faint stirrings of independence. Second—and this is a related point—Members should stand and be counted on whether rationing is necessary and in the public interest, rather than drop the problem in the administration's lap. Instead, we offer the spectacle of Congress refusing to face its own responsibilities.

This body has been fearless and forceful in acting to limit the powers of the Executive to do unpopular things like committing U.S. forces to hostilities and impounding funds for programs voted by the Congress. I have supported these in the name of needed reform. Similarly, I have supported reassertion of our own responsibility to determine national priorities through the budgeting process and am now in the process of developing other initiatives to strengthen the Congress.

But if the Congress wants to be treated as a coequal branch, it should start acting like one. With the latest survey on the subject now showing that the Congress ranks lower than the post-Watergate White House

in public esteem, our performance on this bill may only generate more of the same.

I wish to emphasize that my opposition to the rationing powers should not be interpreted as any slighting of Mr. Simon, who has been performing a most difficult task as well as can be expected to date, under the emergency fuel allocation program. But I cannot say the same for the contingency rationing program published by the Federal Energy Office in the Federal Register on January 16, whereby the most a driver can expect to get is 10 to 12 gallons a week. If instituted, this would work an incredible hardship on many residents of New Hampshire who must use the automobile. It would also be a crippling blow to the recreation and tourism industry which is a significant factor in the economy of the State and others in New England.

Mr. BAUMAN. Mr. Speaker, with the passage of the conference report on S. 2589, the National Emergency Energy Act, the House has brought to a close the 4-month drama in which all the worst angles of our nature were revealed. Not only have we succeeded in twisting the rules of the House, but today we have made a valiant but doomed attempt to repeal the laws of economics.

We have taken the totally mistaken step of trying to write into Federal law the price for a named commodity, domestic crude oil. We voted to extend and expand the powers of Mr. William Simon whose administration of his existing powers has already been called into question and rightfully so. And lastly we have abrogated our constitutional duty to pass upon the issue of rationing by turning over to the President the power to impose rationing plans without our consent. **[Sec. 104.]**

All of the hot air of politicians will not produce one drop of additional fuel, and the measure we have passed today will in all likelihood produce economic chaos in our country. Waiting lines that have been long should now double, fuel that has been scarce should disappear and those who have voted against this so-called Emergency Energy Act will soon be able to say "we told you so." I am pleased to be in that group.

Sadly enough, the economic havoc we are creating is not the most serious byproduct of this legislation. Even graver is the demonstration that the House is unable to act responsibly in a time of national crisis.

Mr. BADILLO. Mr. Speaker, I urge passage of the Energy Emergency Act conference report without further delay. And let us make it clear, Mr. Speaker, that while the President has criticized the Congress for inaction on this legislation, has been White House lobbyists who have been up here since December battling the bill every inch of the way. First they were against a prohibition on windfall profits, and now it is the price rollback provision. But it is clearly our responsibility to deal with the problem of runaway oil prices at the same time we grant the President authority to ration gasoline and take other emergency steps that might be necessary to deal with the present crisis.

The cost of living went up 8.8 percent in 1973, the highest increase since 1947, and inflationary pressures have gotten stronger rather than abating so far in 1974. With skyrocketing food and fuel prices leading the way, real earnings declined almost 2 percent last year, and the

surge of energy-related unemployment in the last few months promises more hardships for the average American.

If the oil companies were in distress, the White House might have a point. But in a period of retrenchment and sacrifice for most of us, reflected in long lines of cars at gas stations and partially heated apartment buildings, the oil industry has racked up record profits. The oil shortage has enabled Exxon to increase its 1972 earnings of $1.5 billion to $2.44 billion in 1973; Mobil to advance from $574 to $834 million; Socal from $547 to $843 million; Texaco from $889 million to $1.3 billion; and Gulf from $447 to $760 million.

I have no objection to earnings levels that will allow the oil companies to carry on needed exploration and development of new energy sources. Regrettably, we have learned that the oil companies have not been plowing their profits into expansion in the United States but have instead been investing development funds in their more profitable overseas ventures. The oil majors' corporate investment abroad has in fact leaped in 10 years from $6 billion to $16 billion while going up only from $6 billion to $10 billion in this country.

A year ago domestically produced crude oil was selling for $3.40 a barrel. Today the price is $5.25, and new oil and oil from smaller stripper wells is selling for as much as $10 a barrel. The 1973 earnings of the industry reflect the profits built into that price range. The price rollback provision in S. 2589 would lower only the higher figure and would allow ample profits for investment in domestic exploration and development. We simply cannot justify continued rising prices that will double the $9 billion earnings of last year during 1974.

Mr. Speaker, the demand for exorbitant profits in the midst of national deprivation cannot be acceded to. The oil companies have shown little inclination in recent years to develop new energy sources here in the United States with their earnings, and there are no guarantees that they will do so under any price structure.

American multinational oil companies have prospered from an artificial pricing system for Mideast oil that has enabled them to avoid nearly all U.S. tax liability on overseas profits. The same companies have lobbied vigorously to keep the oil import quota system in place as a barrier to import of new supplies, with the fallout of discouraging development of new refining capacity in this country. In fact, the majors have successfully opposed efforts by independents to build new facilities; for example, Occidental's planned new terminal at Machiasport, Maine, in the 1960's. Consequently, capital spending by the oil companies in the United States peaked in 1970 and there has been no expansion since.

The monopolistic pattern of the oil industry has also contributed to the current shortage. Profits are a function of supply in a free market, Mr. Speaker. But the oil majors are vertically integrated from wellhead to retail outlets, and their transactions amount to a continual process of selling oil to themselves over and over again right through the production-distribution cycle. With the almost total dependence of independent refiners on the willingness of the multinationals to supply them, oil coming onto the American market can be effectively controlled so that prices can be maintained at artificial levels. The revelation that some of the companies are holding out badly needed supplies

of crude oil because of disagreement with the Government's mandatory allocation program illustrates the total unaccountability of this industry and its undivided devotion to its own prosperity.

Amidst the loss of jobs, personal inconvenience, and cutbacks in services and amenities caused by the oil shortage, we cannot condone an unprecedented bonanza for one industry. Equity requires us to see that sacrifice is borne equally and that one sector does not prosper out of all proportion in a period of severe national distress.

This conference report is but a beginning in our attempt to bring a runaway situation under control. It deserves an overwhelming vote in the affirmative to demonstrate our concern to the public and to send a message to the White House. Further measures will be needed, but let us pass this emergency bill to give the country the assurances it wants that sacrifices will be uniform.

The additional unemployment insurance **[Sec. 116]** in the bill is already necessary, and I believe that we should have the rationing authority in place should the shortage worsen. Our obligation is to all the people, and the conference report before us is a fair and rational beginning for the long-range efforts to deal with the crisis we face.

Ms. HOLTZMAN. Mr. Speaker, it is with grave misgivings that I am voting for the energy conference report. The report has some good provisions. It rolls back prices. It improves benefits for people who lose their jobs as a result of the energy crisis. It will also allow us to get the facts about the true extent of the oil and gasoline shortages.

I strongly support a rollback of oil and gasoline prices. In fact, I had introduced a bill calling for such a rollback earlier this year and I hope that that effort was helpful in getting Congress to recognize the need for such a provision. I am not sure, however, that the rollback provision in this report is the best one we could have had. While it will reduce prices on "new crude," it will raise prices on "old crude" supplies. On the whole, however, we are told that the consumer should be able to save a few cents on a gallon of gas as a result of this price rollback.

The conference report, however, has some very bad features. It contains no windfall profits provision. I know that the American public will not tolerate oil companies' exploiting the energy situation to make windfall profits on the backs of the consumer. We should have dealt with this problem in this report.

In addition, the report gives the President enormous powers over the entire economy without specifying how those powers are to be used. We have seen in the past the dangers that result when Congress gives up its responsibilities and prerogatives over the legislative process to the President. For this reason, I voted against the section of the report that allows the President to put into effect a vast array of "conservation" measures. I hope that the enormous grants of power in this bill do not come back to haunt us.

Under prior legislation, the President has already been given the power to allocate gas and oil supplies, to control prices, and to ration petroleum products. In my view, he has failed to exercise wisely the powers he already has. The Federal Energy Office has just admitted today that its first month of gasoline allocation was a shambles and a failure. I believe that that accurately categorizes the administration's handling of the entire energy crisis. Therefore, it seems to me that in-

stead of giving the same and even more power to the President to do what he had been doing before, the Congress should have specified the course of actions which we feel appropriate to this situation and give the country some real leadership.

Finally, the bill goes too far in relaxing environmental standards. [Title II.] Until we know the true extent of our shortages, such a wholesale rejection of the major environmental advances we have made in the past seems to me unwarranted. Also, there is no guarantee in this bill that areas of high pollution, such as New York City, will receive first priority on clean fuels.

On balance, therefore, while the bill has some important features, it will not in itself provide any ultimate solution to the energy crisis. For the most part, it merely passes the buck to the Nixon administration which has shown no real capability of providing the leadership or the answers the country so desperately needs.

Mr. Koch. Mr. Speaker, when the separate sections of the Emergency Energy Act were considered today, I voted for the rollback of crude oil price [Sec. 110] because they are unreasonably high. I voted to give the President authorization for gas rationing because long lines make it essential that we deal with that problem. I voted for energy conservation plans because it makes sense to conserve energy.

We prevailed on the price rollback, on rationing, and on conservation of energy. However, we were unable to include a restoration of all previous environmental safeguards in the final version of the act.

I believe this energy crisis to be fueled by oil company avarice, companies which encourage gas-guzzling cars, companies happy to denigrate environmental health provisions needed to protect the atmosphere.

Yet our cost of living has risen so high, and our gas lines have grown so long, that I decided on balance to vote for the bill.

This Congress and the President have failed miserably to deal with the energy situation. Finally the Congress has acted, not as I would prefer it to, but it has at least addressed the problem.

On final passage, those representing the oil interests opposed the bill because of the rollback. That rollback, if fairly executed, should prevent further escalations in rent and fuel prices due to increases in fuel prices.

I have been asked by manufacturers making diverse equipment such as outdoor lighting to ask the President to consider very carefully **section 112** of the bill when he applies it. This section requires equitable treatment whereby no one sector of the economy suffers unduly.

What we all must remember is that which is unessential to some is essential to others who earn their living through making it.

An old saying could not be more germane today: "It depends on whose ox is being gored."

Unfortunately, the oil companies are goring all of us.

The President has stated that he will veto the bill if it includes the price rollback, which it now does. I would urge the American public to let the President know by letter that they oppose any such veto.

Mr. Biaggi. Mr. Speaker, I rise in support of the conference report to accompany the emergency energy bill. After a long and bruising legislative battle the final version which has emerged is adequate and

contains a number of key provisions which will aid this country a great deal in its efforts to find both immediate and long-range solutions from our present energy crisis.

Ironically since November when this legislation was first introduced, our national energy situation in the eyes of the administration has come a full circle. During this 4-month period they have gone from classifying it as a problem to a crisis, and now according to the latest Presidential assessment, the energy crisis is over and it is again merely a problem.

Yet when the crisis is viewed in the eyes of my constituents, many of whom waited up to 2 hours to get $2 of gasoline at 65 cents a gallon, they are far from ready to celebrate the end of the energy crisis. I also contend that this premature estimate is not shared by too many of my colleagues in the House, who are more concerned with passing responsibile legislation to provide the beleaguered people of this Nation with relief from their present energy burdens.

Without a doubt the most serious consequence of our current energy crisis has been the astronomical increases in the prices of crude oil and petroleum products. In New York City alone these prices have risen by a whopping 77.4 percent in the last year alone. In the last 3 months of 1973, the cost of residual fuel oil to utilities has risen by 150 percent. What these dismal statistics conclude is that the cost of heating a home, or filling an automobile tank, has become a luxury which fewer Americans, particularly our elderly citizens on fixed incomes, can afford.

The other main consequence of the energy crisis has been a drastic shortage of petroleum products. Even with the institution of certain quasi-rationing plans in several States, gasoline for automobiles remains at a premium, with the end of each month being a particularly hard time. For some in this Nation the remedy for this problem is nationwide mandatory rationing, for others it is the limiting exports of petroleum products and for ther increased production. An indication of the comprehensive nature of this legislation, all three of these remedies are included.

Section 115 limits the exports of coal, petroleum products.

Section 106 authorizes certain domestic oil fields to operate at full efficiency so as to increase production.

Section 104 deals with rationing. While I am opposed to nationwide rationing, as it is written in this bill this will only be utilized after the President has exhausted every alternative to avert any drastic emergency which could arise.

One of the major difficulties we have faced is the lack of knowledge of just what supplies of oil and gasoline are available. I continue to maintain that sufficient supplies exist and that the monopolistic oil companies are withholding supplies from the market to force prices up, drive out competition, and increase profits. A key provision will compel the oil companies to reveal their total reserves on hand and their production of gasoline and other distillates. This provision above could end the shortage and bring supplies—heretofore hidden—to the marketplace.

The American consumer then can look to this legislation for some real relief. One of the factors which has contributed to these drastic

price increases has been this administration's archaic economic policies which allowed the release of certain categories of domestic crude oil from price controls. As a result the barrel of crude which sold for $3.40 last year now sells for $10.35.

This bill proposes to rollback these prices as well as impose a freeze on remaining domestic crude oil prices. However, the most important aspect of this section is the fact that any decreases in the prices of crude oil will be passed on to the consumer, in the form of lower gasoline and home heating.

While this legislation provides relief for the American consumer, it does not ignore the plight of the independent and franchised dealers. Nor only do they stand to benefit from anticipated increased production, **section 109** also provides assurances to franchised dealers from unreasonable actions on the part of major oil companies with respect to canceling, renewing contracts.

I am also pleased to see that the great strides this Nation has made with respect to restoring and preserving our environment will not be totally negated by this legislation. It seeks to strike a fair balance between our immediate energy needs and the future environmental concern of this Nation. **[Title II.]**

The bill contains many additional provisions, some important, others not. I consider the most positive aspect of the legislation to be its wide ranging commitment at providing relief to a nation which has been forced to endure a long and cold winter without the benefit of such essential commodities as heat and gasoline. The average American has been forced to do continuous battle with rising prices and dwindling supplies. Yet until now the Federal Government has been terribly remiss in providing the necessary leadership to help the country out of the cold. Today could be the major step forward. We have proposed a viable, working plan to deal with the crisis. Yet while we might make great strides with this legislation, we will have to overcome one final hurdle first, the President—who has indicated his opposition to it in its present form. I implore the President to listen to the pleas of the American people, the pleas of the infirm and elderly who fear this very survival in the raw cold heatless months ahead; pleas of doctors who are forced to sit in gasoline lines while their patients are in desperate need of their assistance; and the pleas of the average American consumer who finds his wages can no longer provide his family with a warm home. Their cries are real and deserve not to be ignored. We have waited long enough to act, it is time to pass this legislation and get it onto the President's desk for his prompt signature.

Mr. RANDALL. Mr. Speaker, I rise in support of S. 2589, the conference report on the Energy Emergency Act. This measure and its House equivalent have been considered by Congress since last November. I am pleased that although it has been 6 weeks since the second session of the 93d Congress convened, we have today acted decisively and I think wisely. In any event we have not avoided our responsibility to take some action that will hopefully contribute to a lessening of the energy shortages.

I voted against the previous question to permit an amended rule which in turn allowed three separate rollcall votes on three different sections of the conference report, being **section 110, section 105, and section 104.**

Section 110 covers the so-called rollback provision. With oil at about $10 a barrel, a control price of $5.25 is certainly needed. However, latitude is given the President to raise the ceiling by as much as 35 percent or to $9.09 a barrel. This kind of latitude should avoid a major reduction in production from stripper wells that produce 10 barrels or less a day.

In this context I have been shown letters and transcripts by the members of the Interstate and Foreign Commerce Committee taken from testimony given by the major oil companies that they can live, meaning can continue to produce with a ceiling of $7 a barrel. This ceiling should lower prices of refined petroleum products including propane.

Some slight progress has been made administratively in the adjustment of propane prices but **section 110** should accomplish much more to restore lower propane prices.

There are two other record votes taken under the amended rule after the previous question was rejected. On the vote on **section 105** being that section devoted to energy conservation plans I voted to strike that section because the provision for congressional veto, in my judgment, would not be workable or effective.

Regulations could be put into effect before March 15 without any possible veto and then as to those regulations submitted to Congress after March 15 would take effect with only a 15-day delay within which Congress would have the opportunity to veto the regulation. In my judgment, this was not enough time. This provision gave the President absolute, complete, and unfettered authority to regulate the opening and closing hours of every small businessman in America. Under **section 105** of the conference report the power was so broad and absolute it included not only all business and industry but all transportation of every sort, kind, or nature in this country. Surely the Congress should retain some right of review better than a short 15-day delay before the implementations of such absolute authority.

The third and last separate rollcall vote on the conference report was the vote on section 104 which covers what is described in the report as end-use rationing. At least the conference report is less misleading and more straight-forward in the use of terms than the description of rationing in our House bill which called it end-use allocation. I voted to strike this section from the conference report, notwithstanding the requirement that the President make a finding that all other actions he has taken are not sufficient to reserve public health, safety, and welfare.

I voted against **section 104** because I believe rationing would have an adverse effect on those who have to commute. Adjustments could be made but that would take time. Now I am on record as against rationing by a rollcall vote. I shall express my further opposition to rationing by the immediate introduction of legislation that will give Congress a counter veto over any rationing plan imposed by the President.

But after the House worked its will and failed to strike from the conference report the rationing section, what is left at this juncture for those of us against rationing to do? Should we vote against the entire conference report which contains such meritorious provisions as lower ceilings on crude, coal conversion plans, unemployment as-

sistance authorization for those whose unemployment results from the energy crisis, as well as the very worthwhile fuel energy information section which will require full information or some exploration, development processing of any petroleum products? The obvious answer is "No."

So frequently we are served a package of legislation that contains some items that are objectionable or less acceptable, in the same measure with provisions that are in general beneficial and meritorious, such a situation we have with us today in S. 2589. This brings us back again to the hard decision whether the good outweighs the bad. In this instance, Mr. Speaker, I am convinced that even though the rationing authority is accorded the President, I also find that in **section 118** of the report that any rule or order having any substantial impact on the Nation's economy issued by the authority of this conference report is subject to such hearings no later than 45 days after the implementation of the rule or order. Thus it would seem that if rationing should be imposed hearings would have to be held in 45 days and after that a judicial review could be had in the circuit court of appeals.

If for no other reason—I must support S. 2589 on final passage because its **section 106** may well be the salvation of this country in the future. **Section 106** requires, where practicable, for all major fuel burning installations to convert to coal. That not only means our electric powerplants but also our industries. Coal is the one fossil fuel of which we have unlimited supplies, perhaps enough for hundreds of years. The time may come when the Arabs will be begging our country for some of its coal, long after their oil supply has been exhausted.

Then I have to ask myself, who can vote against **section 116**, which provides for grants that States provide unemployment assistance for those who lose or have lost their jobs because of the energy crisis?

Also let me ask who can vote against **section 115**, which for the first time gives the power to the Administrator to restrict exports of coal, petroleum products, and petrochemical stocks?

Finally, someone has said that there may be an Arab oil embargo, but there is also an information embargo. We do not know the capacity of our refineries, the amount of crude they have available, how much we have in our pipelines, or how much we have in our storage tanks, or any of the necessary data from which the Administrator must make his decisions.

Section 124 for the first time gives the Administrator the tools to require reports on all of our energy resources. Who can vote against a conference report which contains such a valuable and essential provision?

Yes; I am against rationing. I do not believe that we will ever have coupon rationing. I voted against the rationing section, but those who voted for this bill on final passage, also voted for the first effective tool to get energy information which is so desperately needed. To vote for the conference report on final passage, is a vote for ceilings on crude until such times as another committee of Congress can look into the matter of windfall profits. Everything considered, the only wise course is to vote for the conference report of S. 2589.

Mr. DRINAN. Mr. Speaker, I support the Energy Emergency Act before us today because of this country's great need for legislation to help ease the great energy shortages which have confronted us.

There are many difficult and controversial aspects of this bill, but, on the whole, I think the legislation is needed and it is important that the House pass it.

I had been hopeful that the provision for the rollback of prices would be more comprehensive and of greater help to the consumer. I think that the environmental provisions in this bill which relax the hard-won environmental standards which the Congress has enacted are regrettable. The provision granting standby authority to the President to ration gasoline will be a helpful one if indeed rationing is needed at some point.

Title I of this bill provides, in summary, as follows:

Creates a Federal Energy Emergency Administration. **[Sec. 103.]**

Gives stand-by rationing authority to the President, to be exercised on a finding that all other actions are not sufficient to preserve public health, safety, and welfare. **[Sec. 104.]**

Authorizes the Federal Energy Administrator to issue regulations restricting public and private consumption of energy, with such regulations being subject to congressional veto. **[Sec. 105.]**

Requires the Administrator, where practicable, to order major fuel burning installations to convert to coal, if they have the capability and necessary plant equipment to do so. **[Sec. 106.]**

Requires the Administrator to develop a contingency plan for allocation of supplies of materials and equipment necessary for energy production. **[Sec. 107.]**

Authorizes the Administrator to require designated domestic oil fields to be produced at their maximum efficient rate of production without detriment to the ultimate recovery of oil and gas under sound engineering and economic principles. **[Sec. 108.]**

Amends the Emergency Petroleum Allocation Act of 1973 to require adjustments in the allocation program to reflect regional disparities in use, population growth, or unusual factors influencing use—including unusual changes in climate conditions. **[Sec. 109.]**

Provides a rollback provision which places a ceiling price on domestic oil production under a formula which would result in an average price of $5.25 per barrel, with resulting cost reductions in the price of crude mandated by this section to be passed through to lower the prices of residual fuel oil and refined petroleum products—including propane. **[Sec. 110.]**

Prevents major oil companies from unreasonably canceling, failing to renew, or otherwise terminating their franchise agreement with retailers of petroleum products. **[Sec. 111.]**

Exempts from the antitrust laws those engaged in voluntary action undertaken to achieve the purposes of this act. **[Sec. 114.]**

Authorizes the Federal Energy Administrator to restrict exports of coal, petroleum products, and petrochemical feedstocks, and requires those restrictions if either the Secretary of Commerce or the Secretary of Labor certifies that such exports would contribute to unemployment in the United States. **[Sec. 115.]**

Requires the President to minimize adverse impacts of actions taken pursuant to this act upon unemployment. **[Sec. 116.]**

Directs the Secretary of Transportation to establish an office to assist in carpool promotion throughout the United States. **[Sec. 117.]**

Imposes criminal and civil penalties for violations of this act.

Authorizes the President, notwithstanding provisions of the Natural Gas Act, to authorize, on a shipment-by-shipment basis, the importation of liquefied natural gas from a foreign country. **[Sec. 129.]**

Authorizing the Small Business Administration and the Department of Housing and Urban Development to make loans to homeowners and small businesses to permit the installation of insulation and other energy-saving equipment. **[Sec. 130.]**

Directs the Secretary of Transportation to establish an office to assist in carpool promotion throughout the Nation. **[Sec. 117.]**

Requires the Administrator to obtain full energy information every 60 days from those engaged in the exploration, development, processing, refining, or transporting of any petroleum product, natural gas, or coal. **[Sec. 124.]**

While I support the gas rationing provisions of this bill, it is not without considerable reluctance that I support the concept of gas rationing. The question of rationing is a complex one. Ultimately, any system of rationing must be fair. If it is unfair, individuals and businesses will be hurt, and it will not enjoy the support of the people. Perhaps the most effective system might be one where each individual could make known his specific gasoline needs and then share equally with all others in the shortage, with limited exceptions. For instance, if there were 10 percent less gasoline available than was needed to meet the Nation's requirements, then each person should get 10 percent less than he needs. I think that this system would be fairer and less discriminatory than a rationing system which arbitrarily assigns 30 or 40 gallons to all individuals for a specific period of time. Individual needs must be considered. Some may require 60 gallons over the same period of time; others, 10 gallons.

Title II of this bill attempts to co-ordinate emergency energy plans with environmental protection requirements now in the laws. **Section 201** amends the Clean Air Act to authorize the Environmental Protection Agency to suspend, until November 1, 1974, stationary source fuel or emission limitations, based on the unavailability of clean fuel necessary for compliance.

Section 202 requires the Environmental Protection Agency to review and make "reasonable and practicable" revisions in air quality implementation plans for those regions in which coal conversion may result in a failure to achieve ambient air quality standards on schedule.

Section 203 amends the Clean Air Act to continue the emission standards established for 1975 model year automobiles during the 1976 model year, thus delaying until 1977 the 90-percent reduction in hydrocarbon and carbon monoxide emissions required by law.

I am unpersuaded that relaxation of environmental standards as proposed in these and other sections of this bill will have any impact on increasing fuel supplies. We simply do not have data to support that proposition. What is known is that relaxing environmental standards will significantly increase dangers to public health and will negate the progress we have made to this date in cleaning up our air. The freeze on auto emission standards may have a negative effect on the energy shortage since installation of pollution control devices may actually save fuel by increasing gasoline mileage.

I oppose the exemption of actions taken under this legislation from the requirements of the National Environmental Policy Act. It is

very difficult for me to believe that this landmark legislation protecting the environment exists for the sole purpose of being disregarded at times when it is needed most. [Sec. 205.]

I vigorously support those principles on which the legislation is based. I believe that the Congress must curb outrageous oil company profits and compel disclosure of fuel reserves. This will also call for immediate recommendations on means for developing short- and long-term increases in energy supply or reductions in energy consumption. This bill also requires progress reports from the President to the Congress every 60 days.

It is difficult in the extreme to explain the President announced intention to veto this legislation except for his willingness to protect the giant oil companies. The havoc which the increases in energy prices—and profits—has played with every citizen's pocketbook is woeful. I cast my vote in favor of this bill today to end that favoritism, that havoc, and those price increases.

Mr. MELCHER. Mr. Speaker, price rollbacks on oil would assure continued foreign investments of U.S. capital to develop oil and gas abroad rather than in our own country.

We are paying high prices for oil because the Arab countries control enough of the world supply to force prices higher and all other countries have followed their lead. An artificial rollback in the United States at this time would only hold up a direct solution to the Arab oil power play.

The right answer is to develop our own domestic oil and gas supplies, but if the new oil discoveries are more profitable in Canada, Venezuela, the North Sea, Africa, the Near East, Summatra, et cetera, et cetera, et cetera, that is where the money will go. As night follows day, just as certainly American oil investment dollars will seek the higher prices and go to the more profitable foreign oil fields if we roll back prices here.

And we will buy that oil at the world price, whatever it is, because we have to have sufficient quantity to keep our industries going and keep our economy from a further recession with massive shutdowns and job losses.

At our current rate of petroleum consumption, America depends for 30 percent of its needs on foreign sources. Only a few years ago we did not need to import oil but because Arab and other foreign oil discoveries were so plentiful and so cheap, big oil companies invested billions of dollars abroad and less and less in domestic production.

Even conservation methods to fully pump out developed fields were sidetracked or almost abandoned completely because secondary recovery did not pay out as good as drilling new wells in the lucrative foreign oil fields.

Recently Congress acted to correct this by lifting all price controls on low production wells—the so-called stripper wells that produce less than 10 barrels of oil per day. This turned unprofitable wells which had been shut down into profitable producers. Old oil fields scattered around the country are now getting secondary treatment to recover oil heretofore left there because the economics of recovering it was unprofitable.

A rollback would be a pullback from the obvious need to put American oil dollars to work in America—not abroad.

The SPEAKER. The Chair will now put the question on these sections in the order specified in the resolution. The sections will be voted on in the following order:

Section 110; section 105 and **section 104.**

The question is, Shall **Section 110** be stricken from the conference report?

The question was taken; and the Speaker announced that the noes appeared to have it.

RECORDED VOTE

Mr. ANDERSON of Illinois. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 173, noes 238, answered "present" 1, not voting 19, as follows:

[Roll No. 46]

AYES—173

Anderson, Ill.	Dickinson	Kuykendall
Archer	Downing	Landgrebe
Arends	Duncan	Litton
Armstrong	Eckhardt	Long, La.
Ashbrook	Edwards, Ala.	Long, Md.
Ashley	Erlenborn	Lott
Aspin	Esch	McClory
Bauman	Findley	McCloskey
Beard	Fisher	McDade
Blackburn	Frenzel	McEwen
Boggs	Gibbons	McKay
Bray	Goldwater	McSpadden
Breaux	Gonzalez	Mahon
Brooks	Goodling	Mailliard
Brotzman	Gray	Mann
Brown, Mich.	Griffiths	Martin, Nebr.
Brown, Ohio	Gross	Martin, N.C.
Broyhill, Va.	Gubser	Mathias, Calif.
Buchanan	Hamilton	Melcher
Burgener	Hammer-	Milford
Burleson, Tex.	schmidt	Miller
Butler	Hanna	Minshall, Ohio
Camp	Hansen, Idaho	Mizell
Casey, Tex.	Hébert	Montgomery
Cederberg	Hillis	Moorhead,
Chamberlain	Hinshaw	Calif.
Clawson, Del	Hogan	Murphy, Ill.
Cochran	Holt	Myers
Collier	Horton	Nelsen
Collins, Tex.	Hosmer	Obey
Conable	Huber	Parris
Conlan	Hudnut	Passmann
Culver	Hutchinson	Patman
Daniel, Dan	Ichord	Pettis
Daniel, Robert	Jarman	Pickle
W., Jr.	Johnson, Colo.	Poage
de la Garza	Johnson, Pa.	Pritchard
Dellenback	Jones, Okla.	Quie
Denholm	Jordan	Quillen
Dennis	Kazen	Railsback
Derwinski	Kemp	Rarick
Devine	Ketchum	Reuss

Rhodes
Robinson, Va.
Robison, N.Y.
Rose
Rousselot
Runnels
Ruppe
Ruth
Ryan
Satterfield
Schneebeli
Sebelius
Shipley
Shoup
Shriver
Skubitz
Slack
Smith, N.Y.
Spence
Steed
Steiger, Ariz.
Steelman
Steiger, Wis.
Symms
Talcott
Taylor, Mo.
Teague
Thornton
Towell, Nev.
Treen
Ullman
Vander Jagt
Veysey
Waggonner
Ware
White
Whitehurst
Wiggins
Wilson, Bob
Wilson, Charles, Tex.
Winn
Wright
Wyatt
Wylie
Wyman
Young, Alaska
Young, Ill.
Young, S.C.
Young, Tex.
Zion

NOES—238

Abdnor
Abzug
Adams
Addabbo
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Badillo
Bafalis
Barrett
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Blatnik
Boland
Bolling
Bowen
Brademas
Breckinridge
Brinkley
Broomfield
Brown, Calif.
Broyhill, N.C.
Burke, Calif.
Burke, Fla.
Burke, Mass.
Burlison, Mo.
Byron
Carey, N.Y.
Carter
Chappell
Chisholm
Clark
Clausen, Don H.
Clay
Cleveland
Cohen
Collins, Ill.
Conte
Conyers
Corman
Cotter
Coughlin
Cronin
Daniels, Dominick V.
Danielson
Davis, Ga.
Davis, S.C.
Delaney
Dellums
Dent
Diggs
Dingell
Donohue
Dorn
Drinan
Dulski
du Pont
Edwards, Calif.
Eilberg
Eshleman
Evans, Colo.
Evins, Tenn.
Fascell
Fish
Flood
Flowers
Flynt
Foley
Ford
Forsythe
Fountain
Fraser
Frey
Froehlich
Fulton
Fuqua
Gaydos
Gettys
Giaimo
Gilman
Ginn
Grasso
Green, Oreg.
Green, Pa.
Grover
Gude
Gunter
Guyer
Haley
Hanley
Hanrahan
Hansen, Wash.
Harrington
Harsha
Hastings
Hawkins
Hays
Hechler, W. Va.
Heckler, Mass.
Heinz
Helstoski
Henderson
Hicks
Holifield
Holtzman
Howard
Hungate
Hunt
Johnson, Calif.
Jones, Ala.
Jones, N.C.
Karth
Kastenmeier
King
Koch
Kyros
Landrum
Latta
Leggett
Lehman
Lent
Lujan
McCollister
McCormack
McFall
McKinney
Macdonald
Madden

Madigan
Mallary
Maraziti
Mathis, Ga.
Matsunaga
Mayne
Mazzoli
Meeds
Metcalfe
Mezvinsky
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Moorhead, Pa.
Morgan
Mosher
Murphy, N.Y.
Murtha
Natcher
Nedzi
Nichols
Nix
O'Brien
O'Hara
O'Neill
Owens
Patten
Pepper
Perkins
Peyser
Pike
Podell
Preyer
Price, Ill.
Randall
Rangel
Rees
Regula
Reid
Riegle
Rinaldo
Rodino
Roe
Rogers
Roncalio, N.Y.
Rooney, Pa.
Rosenthal
Roush
Roy
Roybal
St Germain
Sandman
Sarasin
Sarbanes
Scherle
Schroeder
Seiberling
Shushter
Sikes
Sisk
Smith, Iowa
Snyder
Staggers
Stanton,
J. William
Stanton,
James V.
Stark
Steele
Stephens
Stokes
Stratton
Stubblefield
Stuckey
Studds
Symington
Taylor, N.C.
Thompson, N.J.
Thomson, Wis.
Thone
Tiernan
Udall
Van Deerlin
Vanik
Vigorito
Waldie
Walsh
Wampler
Whalen
Whitten
Widnall
Williams
Wilson,
Charles H.,
Calif.
Wolff
Wydler
Yates
Yatron
Young, Fla.
Young, Ga.
Zablocki
Zwach

ANSWERED "PRESENT"—1

Bell

NOT VOTING—19

Baker
Brasco
Burton
Carney, Ohio
Crane
Davis, Wis.
Frelinghuysen
Jones, Tenn.
Kluczynski
Michel
Mills
Moss
Powell, Ohio
Price, Tex.
Roberts
Rooney, N.Y.
Rostenkowski
Sullivan
Vander Veen

So the motion was rejected.
The Clerk announced the following pairs:
On this vote:

Mr. Roberts for, with Mr. Carney of Ohio against.
Mr. Price of Texas, for, with Mr. Burton against.
Mr. Crane for, with Mr. Moss against.

Until further notice:

Mr. Rooney of New York with Mr. Powell of Ohio.
Mr. Rostenkowski with Mr. Frelinghuysen.
Mrs. Sullivan with Mr. Brasco.
Mr. Kluczynski with Mr. Davis of Wisconsin.
Mr. Jones of Tennessee with Mr. Mills.
Mr. Baker with Mr. Michel.
The result of the vote was announced as above recorded.

The SPEAKER. The question is: Shall **section 105** be stricken from the conference report?

The question was taken; and the Speaker announced that the noes appeared to have it.

RECORDED VOTE

Mr. ECKHARDT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 66, noes 343, not voting 22, as follows:

[Roll No. 47]

AYES—66

Anderson, Ill.	Goodling	Poage
Andrews, N. Dak.	Gross	Randall
Archer	Hammerschmidt	Rarick
Ashbrook	Hays	Roy
Bauman	Holtzman	Runnels
Boggs	Hungate	Scherle
Bray	Hutchinson	Sebelius
Brooks	Jarman	Smith, Iowa
Burleson, Tex.	Jones, Okla.	Steed
Camp	Jordan	Steelman
Casey, Tex.	Kazen	Studds
Cederberg	McCollister	Symms
Clancy	McSpadden	Teague
Culver	Mahon	Thornton
de la Garza	Martin, Nebr.	Vander Jagt
Denholm	Mayne	Waggoner
Dennis	Melcher	White
Dent	Milford	Wilson, Charles, Tex.
Eckhardt	Mizell	Winn
Fisher	Murtha	Young, Alaska
Gaydos	Myers	Young, S.C.
Gonzalez	Parris	Young, Tex.

NOES—343

Abdnor	Boland	Chappell
Abzug	Bolling	Chisholm
Adams	Bowen	Clark
Addabbo	Brademas	Clausen, Don H.
Alexander	Breaux	Clawson, Del.
Anderson, Calif.	Breckinridge	Clay
Andrews, N.C.	Brinkley	Cleveland
Annunzio	Broomfield	Cochran
Arends	Brotzman	Cohen
Armstrong	Brown, Calif.	Collier
Ashley	Brown, Mich.	Collins Ill.
Aspin	Brown, Ohio	Collins, Tex.
Badillo	Broyhill, N.C.	Conable
Bafalis	Broyhill, Va.	Conlan
Barrett	Buchanan	Conte
Beard	Burgener	Conyers
Bell	Burke, Calif.	Corman
Bennett	Burke, Fla.	Cotter
Bergland	Burke, Mass.	Coughlin
Bevill	Burlison, Mo.	Cronin
Biaggi	Butler	Daniel, Dan
Biester	Byron	Daniel, Robert W., Jr.
Bingham	Carey, N.Y.	Daniels, Dominick V.
Blackburn	Carter	Danielson
Blatnik	Chamberlain	Davis, Ga.

Davis, S.C.
Delaney
Dellenback
Dellums
Derwinski
Devine
Dickinson
Diggs
Dingell
Donohue
Dorn
Downing
Drinan
Drinan
Dulski
Duncan
du Pont
Edwards, Ala.
Edwards, Calif.
Eilberg
Erlenborn
Esch
Eshleman
Evans, Colo.
Evins, Tenn.
Fascell
Findley
Fish
Flood
Flowers
Flynt
Foley
Ford
Forsythe
Fountain
Fraser
Frenzel
Frey
Froehlich
Fulton
Fuqua
Gettys
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Grasso
Gray
Green, Oreg.
Green, Pa.
Griffiths
Grover
Gubser
Gude
Gunter
Guyer
Haley
Hamilton
Hanley
Hanna
Hanrahan
Hansen, Idaho
Hansen, Wash.
Harrington
Harsha
Hastings
Hawkins
Hébert
Hechler, W. Va.
Heckler, Mass.
Heinz
Helstoski
Henderson
Hicks
Hillis
Hinshaw
Hogan
Holifield
Holt
Horton
Hosmer
Howard
Huber
Hudnut
Hunt
Ichord
Johnson, Calif.
Johnson, Colo.
Johnson, Pa.
Jones, Ala.
Jones, N.C.
Karth
Kastenmeier
Kemp
Ketchum
King
Koch
Kuykendall
Landrum
Latta
Leggett
Lehman
Lent
Litton
Long, La.
Long, Md.
Lott
Lujan
McClory
McCloskey
McCormack
McDade
McEwen
McFall
McKay
McKinney
Macdonald
Madden
Madigan
Mailliard
Mallary
Mann
Maraziti
Martin, N.C.
Mathias, Calif.
Mathis, Ga.
Matsunaga
Mazzoli
Meeds
Metcalfe
Mezvinsky
Miller
Minish
Mink
Minshall, Ohio
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Murphy, Ill.
Murphy, N.Y.
Natcher
Nedzi
Nelsen
Nichols
Nix
Obey
O'Brien
O'Hara
O'Neill
Owens
Passman
Patman
Patten
Pepper
Perkins
Pettis
Peyser
Pickle
Pike
Podell
Preyer
Price, Ill.
Pritchard
Quie
Quillen
Railsback
Rangel
Rees
Regula
Reid
Reuss
Rhodes
Riegle
Rinaldo
Robinson, Va.
Rodino
Robison, N.Y.
Roe
Rogers
Roncalio, Wyo.
Roncallo, N.Y.
Rooney, Pa.
Rosenthal
Roush
Rousselot
Roybal
Ruth
Ryan
St Germain
Sandman
Sarasin

Sarbanes	Stokes	Ware
Satterfield	Stratton	Whalen
Schneebeli	Stubblefield	Whitehurst
Schroeder	Stuckey	Whitten
Seiberling	Symington	Widnall
Shipley	Talcott	Wiggins
Shoup	Taylor, Mo.	Williams
Shriver	Taylor, N.C.	Wilson, Bob
Shuster	Thompson, N.J.	Wilson, Charles H., Calif.
Sikes	Thomson, Wis.	Wolff
Sisk	Thone	Wright
Skubitz	Tiernan	Wyatt
Slack	Towell, Nev.	Wydler
Smith, N.Y.	Treen	Wylie
Snyder	Udall	Wyman
Spence	Ullman	Yates
Staggers	Van Deerlin	Yatron
Stanton, J. William	Vander Veen	Young, Fla.
Stanton, James V.	Vanik	Young, Ga.
Stark	Veysey	Young, Ill.
Steele	Vigorito	Zablocki
Steiger, Ariz.	Waldie	Zion
Steiger, Wis.	Walsh	Zwach
Stephens	Wampler	

NOT VOTING—22

Baker	Kluczynski	Roberts
Brasco	Kyros	Rooney, N.Y.
Burton	Landgrebe	Rose
Carney, Ohio	Michel	Rostenkowski
Crane	Mills	Ruppe
Davis, Wis.	Moss	Sullivan
Frelinghuysen	Powell, Ohio	
Jones, Tenn.	Price, Tex.	

So the motion was rejected.

The Clerk announced the following pairs:

Mr. Rooney of New York with Mr. Mills.
Mr. Burton with Mr. Jones of Tennessee.
Mr. Rostenkowski with Mr. Ruppe.
Mr. Brasco with Mr. Landgrebe.
Mrs. Sullivan with Mr. Baker.
Mr. Roberts with Mr. Michel.
Mr. Kluczynski with Mr. Crane.
Mr. Kyros with Mr. Davis of Wisconsin.
Mr. Carney of Ohio with Mr. Price of Texas.
Mr. Rose with Mr. Frelinghuysen.
Mr. Moss with Mr. Powell of Ohio.

The result of the vote was announced as above recorded.

PARLIAMENTARY INQUIRY

Mr. LATTA. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. LATTA. Mr. Speaker, on this motion to strike, the Members who are against rationing and wish to strike **section 104,** which authorizes rationing, will vote aye, is that correct?

The SPEAKER. The Chair will state that that is not a parliamentary inquiry.

The question is: Shall **section 104** be stricken from the conference report?

The question was taken; and the Speaker announced that the noes appear to have it.

RECORDED VOTE

Mr. LATTA. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 199, noes 211, not voting 21, as follows:

[Roll No. 48]

AYES—199

Abdnor	Edwards, Ala.	Lehman
Anderson, Ill.	Evins, Tenn.	Long, La.
Andrews, N. Dak.	Findley	Lott
Archer	Fisher	Lujan
Arends	Forsythe	McClory
Armstrong	Frenzel	McCollister
Ashbrook	Frey	McEwen
Bafalis	Froehlich	McKay
Barrett	Fulton	McSpadden
Bauman	Gaydos	Madigan
Beard	Gettys	Mahon
Blackburn	Gibbons	Mallary
Boggs	Goldwater	Martin, Nebr.
Bray	Gonzalez	Mathias, Calif.
Breaux	Goodling	Mathis, Ga.
Brinkley	Gross	Mayne
Brooks	Grover	Melcher
Broomfield	Gubser	Milford
Brotzman	Guyer	Miller
Brown, Ohio	Hammerschmidt	Minshall, Ohio
Broyhill, N.C.	Hanrahan	Mizell
Buchanan	Hansen, Idaho	Montgomery
Burgener	Harsha	Moorhead, Calif.
Burke, Fla.	Hastings	Murtha
Burleson, Tex.	Hays	Myers
Camp	Hébert	Natcher
Carter	Hechler, W. Va.	Nelsen
Casey, Tex.	Hillis	O'Brien
Cederberg	Hinshaw	Parris
Chamberlain	Hogan	Passman
Clancy	Holt	Perkins
Clausen, Don H.	Horton	Pettis
Clawson, Del	Hosmer	Poage
Cleveland	Huber	Quie
Cochran	Hudnut	Quillen
Collier	Hungate	Railsback
Collins, Tex.	Hunt	Randall
Conable	Hutchinson	Rarick
Conlan	Ichord	Regula
Conyers	Jarman	Rhodes
Daniel, Robert W., Jr.	Johnson, Colo.	Robinson, Va.
de la Garza	Johnson, Pa.	Roncallo, N.Y.
Dellenback	Jones, Okla.	Roush
Denholm	Kastenmeier	Rousselot
Dennis	Kazen	Runnels
Dent	Kemp	Ryan
Derwinski	Ketchum	St Germain
Devine	King	Sandman
Dickinson	Kuykendall	Scherle
Dorn	Landgrebe	Schneebeli
Duncan	Latta	Schroeder

Sebelius
Shipley
Shoup
Shriver
Shuster
Slack
Snyder
Spence
Stanton, J. William
Steed
Steelman
Steiger, Ariz.
Steiger, Wis.
Stubblefield
Studds
Symms
Talcott
Taylor, Mo.
Teague
Thomson, Wis.
Thone
Thornton
Tiernan
Towell, Nev.
Treen
Veysey
Waggonner
Wampler
Ware
White
Whitehurst
Whitten
Wiggins
Williams
Wilson, Bob
Winn
Wyatt
Wydler
Wylie
Wyman
Young, Alaska
Young, Fla.
Young, S.C.
Young, Tex.
Zion
Zwach

NOES—211

Adams
Addabbo
Alexander
Anderson, Calif.
Andrews, N.C.
Annunzio
Ashley
Aspin
Badillo
Bell
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Blatnik
Boland
Bolling
Bowen
Brademas
Breckenridge
Brown, Calif.
Brown, Mich.
Broyhill, Va.
Burke, Calif.
Burke, Mass.
Burlison, Mo.
Butler
Byron
Carey, N.Y.
Chappell
Chisholm
Clark
Clay
Cohen
Collins, Ill.
Conte
Corman
Cotter
Coughlin
Cronin
Culver
Daniel, Dan
Daniels, Dominick V.
Danielson
Davis, Ga.
Davis, S.C.
Delaney
Dellums
Diggs
Dingell
Donohue
Downing
Drinan
Dulski
du Pont
Eckhardt
Edwards, Calif.
Eilberg
Erlenborn
Esch
Eshleman
Evans, Colo.
Fascell
Fish
Flood
Flowers
Flynt
Foley
Ford
Fountain
Fraser
Fuqua
Giaimo
Gilman
Ginn
Grasso
Gray
Green, Oreg.
Green, Pa.
Griffiths
Gude
Gunter
Haley
Hamilton
Hanley
Hanna
Hansen, Wash.
Harrington
Hawkins
Heckler, Mass.
Heinz
Helstoski
Henderson
Hicks
Holifield
Holtzman
Howard
Johnson, Calif.
Jones, Ala.
Jones, N.C.
Jordan
Karth
Koch
Kyros
Landrum
Leggett
Lent
Litton
Long, Md.
McCloskey
McCormack
McDade
McFall
McKinney
Macdonald
Madden
Mailliard
Mann
Maraziti
Martin, N.C.
Matsunaga
Mazzoli
Meeds
Metcalfe
Mezvinsky
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Moorhead, Pa.
Morgan
Mosher
Murphy, Ill.
Murphy, N.Y.
Nedzi
Nichols
Nix

Obey	Rooney, Pa.	Symington
O'Hara	Rosenthal	Taylor, N.C.
O'Neill	Roy	Thompson, N.J.
Owens	Roybal	Udall
Patman	Ruppe	Ullman
Patten	Ruth	Van Deerlin
Pepper	Sarasin	Vander Jagt
Peyser	Sarbanes	Vander Veen
Pickle	Satterfield	Vanik
Pike	Seiberling	Vigorito
Podell	Sikes	Waldie
Preyer	Sisk	Walsh
Price, Ill.	Skubitz	Whalen
Pritchard	Smith, Iowa	Widnall
Rees	Smith, N.Y.	Wilson, Charles H., Calif.
Reuss	Staggers	Wilson, Charles, Tex.
Riegle	Stanton, James V.	Wolff
Rinaldo	Stark	Wright
Robison, N.Y.	Steele	Yates
Rodino	Stephens	Yatron
Roe	Stokes	Young, Ga.
Rogers	Stratton	Young, Ill.
Roncalio, Wyo.	Stuckey	Zablocki

NOT VOTING—21

Baker	Jones, Tenn.	Rangel
Brasco	Kluczynski	Reid
Burton	Michel	Roberts
Carney, Ohio	Mills	Rooney, N.Y.
Crane	Moss	Rose
Davis, Wis.	Powell, Ohio	Rostenkowski
Frelinghuysen	Price, Tex.	Sullivan

So the motion was rejected.

The Clerk announced the following pairs:

On this vote:

Mr. Roberts for, with Mr. Rostenkowski against.
Mr. Crane for, with Mr. Rooney of New York against.
Mr. Price of Texas for, with Mr. Kluczynski against.
Mr. Frelinghuysen for, with Mr. Brasco against.
Mr. Michel for, with Mr. Carney of Ohio against.
Mr. Baker for, with Mr. Reid against.

Until further notice:

Mrs. Sullivan with Mr. Jones of Tennessee.
Mr. Moss with Mr. Rose.
Mr. Burton with Mr. Powell of Ohio.
Mr. Davis of Wisconsin with Mr. Rangel.

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the conference report.

The question was taken, and the Speaker announced that the ayes appeared to have it.

RECORDED VOTE

Mr. BROWN of Ohio. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 258, noes 151, answered "present" 1, not voting 21, as follows:

[Roll No. 49]

AYES—258

Abdnor
Adams
Addabbo
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Ashley
Aspin
Badillo
Bafalis
Barrett
Bell
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Blatnik
Boggs
Boland
Bolling
Bowen
Brademas
Breckinridge
Broomfield
Brown, Calif.
Brown, Mich.
Broyhill, N.C.
Burke, Calif.
Burke, Mass.
Burlison, Mo.
Byron
Carey, N.Y.
Carter
Chappell
Chisholm
Clark
Clausen, Don H.
Clay
Cohen
Collins, Ill.
Conte
Corman
Cotter
Coughlin
Cronin
Culver
Daniels, Dominick V.
Danielson
Davis, Ga.
Davis, S.C.
Delaney
Dellums
Dent
Diggs
Dingell
Donohue
Dorn
Drinan
Duncan
du Pont
Edwards, Ala.
Edwards, Calif.
Eilberg
Esch
Eshleman
Evans, Colo.
Evins, Tenn.
Fascell
Fish
Flood
Flowers
Flynt
Foley
Ford
Forsythe
Fountain
Fraser
Frenzel
Frey
Froehlich
Fulton
Fuqua
Gaydos
Giaimo
Gilman
Ginn
Grasso
Gray
Green, Oreg.
Green, Pa.
Griffiths
Grover
Gude
Gunter
Haley
Hamilton
Hanley
Hanrahan
Hansen, Wash.
Harrington
Harsha
Hastings
Hawkins
Hays
Heckler, Mass.
Heinz
Helstoski
Henderson
Hicks
Hillis
Hinshaw
Holifield
Holtzman
Horton
Howard
Hudnut
Hungate
Hunt
Johnson, Calif.
Jones, Ala.
Jones, N.C.
Karth
Kastenmeier
King
Koch
Kyros
Landrum
Leggett
Lehman
Lent
Litton
Long, Md.
McClory
McCloskey
McCollister
McCormack
McDade
McFall
McKay
McKinney
Macdonald
Madden
Madigan
Mallary
Mann
Maraziti
Mathias, Calif.
Matsunaga
Mayne
Mazzoli
Meeds
Metcalfe
Mezinsky
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Moorhead, Pa.
Morgan
Mosher
Murphy, Ill.
Murphy, N.Y.
Murtha
Natcher
Nedzi
Nichols
Nix
Obey
O'Brien
O'Hara
O'Neill
Owens
Patman
Patten
Pepper
Perkins
Peyser
Pickle
Pike

Podell
Preyer
Price, Ill.
Pritchard
Quillen
Railsback
Randall
Rangel
Regula
Reuss
Riegle
Rinaldo
Robison, N.Y.
Rodino
Roe
Rogers
Roncalio, Wyo.
Roncallo, N.Y.
Rooney, Pa.
Rosenthal
Roush
Roy
Roybal
St Germain
Sandman
Sarasin
Sarbanes
Seiberling
Shuster
Sikes
Sisk
Smith, Iowa
Smith, N.Y.
Snyder
Staggers
Stanton,
J. William
Stanton,
James V.
Stark
Steele
Steiger, Wis.
Stephens
Stokes
Stratton
Stubblefield
Stuckey
Symington
Taylor, N.C.
Thompson, N.J.
Thompson, Wis.
Thone
Tiernan
Udall
Ullman
Van Deerlin
Vander Jagt
Vander Veen
Vanik
Vigorito
Walsh
Wampler
Whalen
Whitten
Widnall
Williams
Wilson,
Charles H.,
Calif.
Wolff
Wydler
Yates
Yatron
Young, Ga.
Young, Ill.
Zablocki
Zwach

NOES—151

Abzug
Anderson, Ill.
Archer
Arends
Armstrong
Ashbrook
Bauman
Beard
Blackburn
Bray
Breaux
Brinkley
Brooks
Brotzman
Brown, Ohio
Broyhill, Va.
Buchanan
Burgener
Burke, Fla.
Burleson, Tex.
Butler
Camp
Casey, Tex.
Cederberg
Chamberlain
Clancy
Clawson, Del.
Cleveland
Cochran
Collier
Collins, Tex.
Conable
Conlan
Conyers
Daniel, Dan
Daniel, Robert
W., Jr
de la Garza
Dellenback
Denholm
Dennis
Derwinski
Devine
Dickinson
Downing
Dulski
Eckhardt
Erlenborn
Findley
Fisher
Gettys
Gibbons
Goldwater
Gonzalez
Goodling
Gross
Gubser
Guyer
Hammer-
schmidt
Hanna
Hansen, Idaho
Hébert
Hechler, W. Va.
Hogan
Holt
Hosmer
Huber
Hutchinson
Ichord
Jarman
Johnson, Colo.
Johnson, Pa.
Jones, Okla.
Jordan
Kazen
Kemp
Ketchum
Kuykendall
Landgrebe
Latta
Long, La.
Lott
Lujan
McEwen
McSpadden
Mahon
Martin, Nebr.
Martin, N.C.
Mathis, Ga.
Melcher
Milford
Miller
Minshall, Ohio
Mizell
Montgomery
Moorhead,
Calif.
Myers
Nelsen
Parris
Passman
Pettis
Poage
Quie
Rarick
Rees
Rhodes
Robinson, Va.
Rousselot
Runnels
Ruppe

Ruth	Steiger, Ariz.	Wilson, Bob
Ryan	Studds	Wilson, Charles, Tex.
Satterfield	Symms	Winn
Scherle	Talcott	Wright
Schneebeli	Taylor, Mo.	Wyatt
Schroeder	Teague	Wylie
Sebelius	Thornton	Wyman
Shipley	Towell, Nev.	Young, Alaska
Shoup	Treen	Young, Fla.
Shriver	Veysey	Young, S.C.
Skubitz	Waggonner	Young, Tex.
Slack	Waldie	Zion
Spence	White	
Steed	Whitehurst	
Steelman	Wiggins	

ANSWERED "PRESENT"—1

Ware

NOT VOTING—21

Baker	Jones, Tenn.	Price, Tex.
Brasco	Kluczynski	Reid
Burton	Mailliard	Roberts
Carney, Ohio	Michel	Rooney, N.Y.
Crane	Mills	Rose
Davis, Wis.	Moss	Rostenkowski
Frelinghuysen	Powell, Ohio	Sullivan

So the conference report was agreed to.

The Clerk announced the following pairs:

On this vote:

Mr. Rooney of New York for, with Mr. Crane against.
Mr. Carney of Ohio for, with Mr. Roberts against.
Mr. Frelinghuysen for, with Mr. Price of Texas against.
Mr. Burton for, with Mr. Michel against.
Mr. Kluczynski for, with Mr. Powell of Ohio against.
Mr. Rostenkowski for, with Mr. Baker against.

Until further notice:

Mr. Brasco with Mr. Jones of Tennessee.
Mr. Reid with Mr. Mills.
Mr. Moss with Mr. Davis of Wisconsin.
Mrs. Sullivan with Mr. Mailliard.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CHAPTER 8

First Conference Report on S. 2589 and Debate on S. 2589 and S. 921

Notes

In an attempt to move the Energy Emergency Act before the Christmas recess, a modified version of S. 2589 was added as an amendment to S. 921, the Wild and Scenic Rivers bill, previously passed by the House. The amendment was passed by the Senate on December 21, 1973 by a vote of 52–8.

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 93-763

ENERGY EMERGENCY ACT

JANUARY 22, 1974.—Ordered to be printed

Mr. STAGGERS, from the committee of conference,

CONFERENCE REPORT

[To accompany S. 2589]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act, including the following table of contents, may be cited as the "Energy Emergency Act".

TABLE OF CONTENTS

TITLE I—ENERGY EMERGENCY AUTHORITIES

SEC. 101. FINDINGS AND PURPOSES.

(a) (1) The Congress hereby determines that—

(A) shortages of crude oil, residual fuel oil, and refined petroleum products caused by insufficient domestic refining capacity, inadequate domestic production, environmental constraints, and the unavailability of imports sufficient to satisfy domestic demand, now exist;

(B) such shortages have created or will create severe economic dislocations and hardships;

(C) such shortages and dislocations jeopardize the normal flow of interstate and foreign commerce and constitute an energy emergency which can be averted or minimized most efficiently and effectively through prompt action by the executive branch of Government;

(D) disruptions in the availability of imported energy supplies, particularly crude oil and petroleum products, pose a serious risk to national security, economic well-being, and health and welfare of the American people;

(E) because of the diversity of conditions, climate, and available fuel mix in different areas of the Nation, a primary governmental responsibility for developing and enforcing energy emer-

gency measures lies with the States and with the local governments of major metropolitan areas acting in accord with the provisions of this Act; and

(F) the protection and fostering of competition and the prevention of anticompetitive practices and effects are vital during the energy emergency.

(2) On the basis of the determinations specified in subparagraphs (A) through (F) of paragraph (1) of this subsection, the Congress hereby finds that current and imminent fuel shortages have created a nationwide energy emergency.

(b) The purposes of this Act are to call for proposals for energy emergency rationing and conservation measures and to authorize specific temporary emergency actions to be exercised, subject to congressional review and right of approval or disapproval, to assure that the essential needs of the United States for fuels will be met in a manner which, to the fullest extent practicable: (1) is consistent with existing national commitments to protect and improve the environment; (2) minimizes any adverse impact on employment; (3) provides for equitable treatment of all sectors of the economy; (4) maintains vital services necessary to health, safety, and public welfare; and (5) insures against anticompetitive practices and effects and preserves, enhances, and facilitates competition in the development, production, transportation, distribution, and marketing of energy resources.

SEC. 102. DEFINITIONS.

For purposes of this Act:

(1) The term "State" means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

(2) The term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (as defined in the Emergency Petroleum Allocation Act of 1973).

(3) The term "United States" when used in the geographical sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(4) The term "Administrator" means the Administrator of the Federal Energy Emergency Administration.

SEC. 103. FEDERAL ENERGY EMERGENCY ADMINISTRATION.

(a) There is hereby established until May 15, 1975, unless superseded prior to that date by law, a Federal Energy Emergency Administration which shall be temporary and shall be headed by a Federal Energy Emergency Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. Vacancies in the office of Administrator shall be filled in the same manner as the original appointment.

(b) The Administrator shall be compensated at the rate provided for level II of the Executive Schedule. Subject to the Civil Service and Classification provisions of title 5, United States Code, the Administrator may employ such personnel as he deems necessary to carry out his functions.

(c) Effective on the date on which the Administrator first takes office (or, if later, on January 1, 1974), all functions, powers, and du-

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ties of the President under sections 4, 5, 6, and 9 of the Emergency Petroleum Allocation Act of 1973 (as amended by this Act), and of any officer, department, agency, or State (or officer thereof) under such sections (other than functions vested by section 6 of such Act in the Federal Trade Commission, the Attorney General, or the Antitrust Division of the Department of Justice), are transferred to the Administrator. All personnel, property, records, obligations, and commitments used primarily with respect to functions transferred under the preceding sentence shall be transferred to the Administrator.

(d) (1) Whenever the Federal Energy Emergency Administration submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

(2) Whenever the Federal Energy Emergency Administration submits any legislative recommendations or testimony or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Federal Energy Emergency Administration to submit its legislative recommendations, or testimony or comments to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress.

(3) The Federal Energy Emergency Administration shall be considered an independent regulatory agency for purposes of chapter 35 of title 44, United States Code, but not for any other purpose.

SEC. 101. END-USE RATIONING.

Section 4 of the Emergency Petroleum Allocation Act of 1973 is amended by adding at the end thereof the following new subsection:

"(h) (1) The President may promulgate a rule which shall be deemed a part of the regulation under subsection (a) and which shall provide, consistent with the objectives of subsection (b), for the establishment of a program for the rationing and ordering of priorities among classes of end-users of crude oil, residual fuel oil, or any refined petroleum product, and for the assignment to end-users of such products of rights, and evidence of such rights, entitling them to obtain such products in precedence to other classes of end-users not similarly entitled.

"(2) The rule under this subsection shall take effect only if the President finds that, without such rule, all other practicable and authorized methods to limit energy demand will not achieve the objectives of section 4(b) of this Act and of the Energy Emergency Act.

"(3) The President shall, by order, in furtherance of the rule authorized pursuant to paragraph (1) of this subsection and consistent with the attainment of the objectives in subsection (b) of this section, cause such adjustments in the allocations made pursuant to the regulation under subsection (a) as may be necessary to carry out the purposes of this subsection.

"(4) The President shall provide for procedures by which any end-user of crude oil, residual fuel oil or refined petroleum products for which priorities and entitlements are established under paragraph (1) of this subsection may petition for review and reclassification or modi-

fication of any determination made under such paragraph with respect to his rationing priority or entitlement. Such procedures may include procedures with respect to such local boards as may be authorized to carry out functions under this subsection pursuant to section 122 of the Energy Emergency Act.

"(5) No rule or order under this section may impose any tax or user fee, or provide for a credit or deduction in computing any tax."

SEC. 105. ENERGY CONSERVATION PLANS.

(a) (1) (A) Pursuant to the provisions of this section, the Administrator is authorized to promulgate by regulation one or more energy conservation plans in accord with this section which shall be designed (together with actions taken and proposed to be taken under other authority of this or other Acts) to result in a reduction of energy consumption to a level which can be supplied by available energy resources. For purposes of this section, the term "energy conservation plan" means a plan for transportation controls (including but not limited to highway speed limits) or such other reasonable restrictions on the public or private use of energy (including limitations on energy consumption of businesses) which are necessary to reduce energy consumption and which are authorized by this Act.

(B) No energy conservation plan promulgated by regulation under this section may impose rationing or any tax or user fee, or provide for a credit or deduction in computing any tax.

(2) An energy conservation plan shall become effective as provided for in subsection (b). Such a plan shall apply in each State, except as otherwise provided in an exemption granted pursuant to the plan in cases where a comparable State or local program is in effect, or where the Administrator finds special circumstances exist.

(3) An energy conservation plan may not deal with more than one logically consistent subject matter.

(4) An amendment to an energy conservation plan, if it has significant substantive effect, shall be transmitted to Congress and shall be effective only in accordance with subsection (b). Any amendment which does not have significant substantive effect and any rescission of a plan may be made effective in accordance with section 553 of title 5, United States Code.

(5) Subject to subsection (b) (3), provision of an energy conservation plan shall remain in effect for a period specified in the plan unless earlier rescinded by the Administrator, but shall terminate in any event no later than May 15, 1975.

(b) (1) For purposes of this subsection, the term "energy conservation plan" means a plan promulgated by regulation proposed under subsection (a) of this section or an amendment thereto which has significant substantive effect.

(2) The Administrator shall transmit any energy conservation plan (bearing an identification number) to each House of Congress on the date on which it is promulgated.

(3) (A) If an energy conservation plan is transmitted to Congress before March 1, 1974, and provides for an effective date earlier than March 1, 1974, such plan shall take effect on the date provided in the plan; but if either House of the Congress, before the end of the first period of 15 calendar days of continuous session of Congress after the date on which such plan is transmitted to it, passes a resolution stating

in substance that such House does not favor such plan, such plan shall cease to be effective on the date of passage of such resolution.

(B) If an energy conservation plan is transmitted to the Congress and provides for an effective date on or after March 1, 1974 and before July 1, 1974, such plan shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which such plan is transmitted to it unless, between the date of transmittal and the end of the 15-day period, either House passes a resolution stating in substance that such House does not favor such plan.

(C) An energy conservation plan proposed to be made effective on or after July 1, 1974, shall take effect only if approved by Act of Congress.

(4) For the purpose of paragraph (3) of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the 15-day period.

(5) Under provisions contained in an energy conservation plan, a provision of the plan may take effect at a time later than the date on which such plan otherwise is effective.

(c) (1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(2) For the purpose of this subsection, "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the ———— does not favor the energy conservation plan numbered ———— transmitted to Congress by the Administrator of the Federal Energy Emergency Administration on ————, 19—.", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one energy conservation plan.

(3) A resolution with respect to an energy conservation plan shall be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4) (A) If the committee to which a resolution with respect to an energy conservation plan has been referred has not reported it at the end of 5 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the

resolution or to discharge the committee from further consideration of any other resolution with respect to such energy conservation plan which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same energy conservation plan), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) If the motion, to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same plan.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to an energy conservation plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution with respect to an energy conservation plan, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to an energy conservation plan shall be decided without debate.

(d)(1) In carrying out the provisions of this Act, the Administrator shall, to the greatest extent practicable, evaluate the potential economic impacts of proposed regulatory and other actions including but not limited to the preparation of an analysis of the effect of such actions on—

(A) the fiscal integrity of State and local government;

(B) vital industrial sectors of the economy;

(C) employment, by industrial and trade sector, as well as on a national, regional, State, and local basis;

(D) the economic vitality of regional, State, and local areas;

(E) the availability and price of consumer goods and services;

(F) the gross national product;

(G) competition in all sectors of industry; and

(H) small business.

(2) *The Administrator shall develop analyses of the economic impact of any energy conservation plan on States or significant sectors thereof, considering the impact on energy resources as fuel and as feedstock for industry.*

(3) *Such analysis shall, whenever possible, be made explicit and, to the extent practicable, other Federal agencies and agencies of State and local governments which have special knowledge and expertise relevant to the impact of proposed regulatory or other actions shall be consulted in making the analyses, and all Federal agencies shall cooperate with the Administrator in preparing such analyses except that the Administrator's actions pursuant to this subsection shall not create any right of review or cause of action except as otherwise exist under other provisions of law.*

(4) *The Administrator, together with the Secretaries of Labor and Commerce, shall monitor the economic impact of any energy actions taken by the Administrator, and shall provide the Congress with separate reports every thirty days on the impact of the energy shortage and such emergency actions on employment and the economy.*

(e) *Any energy conservation plan which the Administrator submits to the Congress pursuant to subsection (b) of this section shall include findings of fact and a specific statement explaining the rationale for each provision contained in such plan.*

SEC. 106. COAL CONVERSION AND ALLOCATION.

(a) *The Administrator shall, to the extent practicable and consistent with the objectives of this Act, by order, after balancing on a plant-by-plant basis the environmental effects of use of coal against the need to fulfill the purposes of this Act, prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this Act, has the capability and necessary plant equipment to burn coal. Any installation to which such an order applies shall be permitted to continue to use coal as provided in section 119(b) of the Clean Air Act. To the extent coal supplies are limited to less than the aggregate amount of coal supplies which may be necessary to satisfy the requirements of those installations which can be expected to use coal (including installations to which orders may apply under this subsection), the Administrator shall prohibit the use of natural gas and petroleum products for those installations where the use of coal will have the least adverse environmental impact. A prohibition on use of natural gas and petroleum products under this subsection shall be contingent upon the availability of coal, coal transportation facilities, and the maintenance of reliabilty of service in a given service area. The Administrator shall require that fossil-fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable of using coal as a primary energy source instead of or in addition to other fossil fuels. No fossil-fuel-fired electric powerplant may be required under this section to be so designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) if an adequate and reliable supply of coal is not avail-*

able and is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

(b) The Administrator may by rule prescribe a system for allocation of coal to users thereof in order to attain the objectives specified in this section.

SEC. 107. MATERIALS ALLOCATION.

(a) The Administrator shall, within 30 days after the date of enactment of this Act, propose (in the nature of a proposed rule affording an opportunity for the presentation of views) and publish (and may from time to time amend) a contingency plan for allocation of supplies of materials and equipment necessary for exploration, production, refining, and required transportation of energy supplies and for the construction and maintenance of energy facilities. At such time as he finds that it is necessary to put all or part of such plan into effect, he shall transmit such plan or portion thereof to each House of Congress and such plan or portion thereof shall take effect in the same manner as an energy conservation plan prescribed under section 105 and to which section 105(b)(3)(B) applies (except that such plan may be submitted at any time after the date of enactment of this Act and before May 15, 1975).

(b) Section 4(b)(1)(G) of the Emergency Petroleum Allocation Act of 1973 is amended to read as follows:

"(G) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of exploration for, and production or extraction of—

"(i) fuels, and

"(ii) minerals essential to the requirements of the United States,

and for required transportation related thereto,"

SEC. 108. FEDERAL ACTIONS TO INCREASE AVAILABLE DOMESTIC PETROLEUM SUPPLIES.

(a) The Administrator may initiate the following measures to supplement domestic energy supplies for the duration of the emergency:

(1) require by order or rule, the production of designated existing domestic oilfields, at their maximum efficient rate of production, which is the maximum rate at which production may be sustained without detriment to the ultimate recovery of oil and gas under sound engineering and economic principles. Such fields are to be designated by the Secretary of the Interior, after consultation with the appropriate State regulatory agency. Data to determine the maximum efficient rate of production shall be supplied to the Secretary of the Interior by the State regulatory agency which determines the maximum efficient rate of production and by the operators who have drilled wells in, or are producing oil and gas from such fields;

(2) require, if necessary to meet essential energy needs, production of certain designated existing domestic oilfields at rates in excess of their currently assigned maximum efficient rates. Fields to be so designated, by the Secretary of the Interior or the Secretary of the Navy as to the Federal lands or as to Federal interests in lands under their respective jurisdiction, shall be those fields where the types and quality of reservoirs are such as to permit production at rates in excess of the currently assigned sustainable maximum efficient rate for periods of ninety days or more without excessive risk of losses in recovery;

(3) require the adjustment of processing operations of domestic refineries to produce refined products in proportions commensurate with national needs and consistent with the objectives of section 4(b) of the Emergency Petroleum Allocation Act of 1973.

(b) Nothing in this section shall be construed to authorize the production of any Naval Petroleum Reserve now subject to the provisions of chapter 641 of title 10 of the United States Code.

SEC. 109. OTHER AMENDMENTS TO THE EMERGENCY PETROLEUM ALLOCATION ACT OF 1973.

(a) Section 4 of the Emergency Petroleum Allocation Act of 1973 as amended by section 104 of this Act is amended by adding at the end of such section the following new subsection:

"(i) If any provision of the regulation under subsection (a) provides that any allocation of residual fuel oil or refined petroleum products is to be based on use of such a product or amounts of such product supplied during a historical period, the regulation shall contain provisions designed to assure that the historical period can be adjusted (or other adjustments in allocations can be made) in order to reflect regional disparities in use, population growth or unusual factors influencing use (including unusual changes in climatic conditions), of such oil or product in the historical period. This subsection shall take effect 30 days after the date of enactment of the Energy Emergency Act. Adjustments for such purposes shall take effect no later than 6 months after the date of enactment of this subsection. Adjustments to reflect population growth shall be based upon the most current figures available from the United States Bureau of the Census."

(b) Section 4(g)(1) of the Emergency Petroleum Allocation Act of 1973 is amended by striking out "February 28, 1975" in each case the term appears and inserting in each case "May 15, 1975".

SEC. 110. PROHIBITION ON WINDFALL PROFITS—PRICE GOUGING.

(a)(1) The President shall exercise his authority under the Emergency Petroleum Allocation Act of 1973 and under the Economic Stabilization Act of 1970 so as to specify prices for sales of petroleum products produced in or imported into the United States, which avoid windfall profits by sellers.

(2) Any interested person, who has reason to believe that any price (specified under any of the authorities referred to in paragraph (1) of this subsection) of petroleum products permits a seller thereof any windfall profits, may petition the Renegotiation Board (created by

section 107(a) of the Renegotiation Act of 1951 and hereinafter in this subsection referred to as the "Board") for a determination under subparagraph (A) or (B) or paragraph (3).

(3)(A) Upon petition of any interested person, the Board may by rule determine, after opportunity for oral presentation of views, data, and arguments, whether the price (specified under any of the authorities referred to in paragraph (1)) of petroleum product permits sellers thereof to receive windfall profits. Upon a final determination of the Board that such price permits windfall profits to be so received, it shall specify a price for such sales which will not permit such profits to be received by such sellers. After such a final determination, no higher price may be specified (under any of the authorities specified in paragraph (1)) except with the approval of the Board.

(B) Upon petition of any interested person and notwithstanding any proceeding or determination under subparagraph (A), the Board may determine whether the price charged by a particular seller of any petroleum product permitted such seller to receive windfall profits. If, on the basis of such petition, the Board has reason to believe that such price has permitted such seller to receive windfall profits, it may order such seller to take such actions (including the escrowing of funds) as it may deem appropriate to assure that sufficient funds will be available for the refund of windfall profits in the event there is a final determination by the Board under this subparagraph that such seller has received windfall profits. Prior to a final determination under this subparagraph, such seller shall be afforded a hearing in accordance with the procedures required by section 554 of title 5, United States Code. Upon a final determination of the Board that such price permitted such seller to receive windfall profits, the Board shall order such seller to refund an amount equal to such windfall profits to the persons who have purchased from such seller at prices which resulted in such windfall profits. If such persons are not reasonably ascertainable, the Board shall order the sellers for the purpose of refunding such profits, to reduce the price for future sales, to create a fund against which previous purchasers of such item may file a claim under rules which shall be prescribed by the Board, or to take such other action as the Board may deem appropriate.

(C) Notwithstanding section 108 of the Renegotiation Act of 1951 and section 211 of the Economic Stabilization Act of 1970, any final determination under subparagraph (A) or (B) shall be subject to judicial review in accordance with sections 701 through 706 of title 5, United States Code.

(4)(A) The Board may provide, in its discretion under regulations prescribed by the Board, for such consolidation as may be necessary or appropriate to carry out the purposes of this subsection.

(B) The Board may make such rules, regulations, and orders as it deems necessary or appropriate to carry out its functions under this subsection.

(5) The determination and approval authority of the Board under this paragraph may not be delegated or redelegated pursuant to section 107(d) of the Renegotiation Act of 1951 to any agency of the Government other than an agency established by the Board.

(6) For the purposes of subparagraph (B) of paragraph (3), the term "windfall profits" means that profit (during an appropriate accounting period as determined by the Board) derived from the sale of any petroleum product determined by the Board to be in excess of the lesser of—

(A) a reasonable profit with respect to the particular seller as determined by the Board upon consideration of—

(i) the reasonableness of its costs and profits with particular regard to volume of production;

(ii) the net worth, with particular regard to the amount and source of capital employed;

(iii) the extent of risk assumed;

(iv) the efficiency and productivity, particularly with regard to cost reduction techniques and economies of operation; and

(v) other factors the consideration of which the public interest and fair and equitable dealing may require which may be established and published by the Board; or

(B) the greater of—

(i) the average profit obtained by sellers for such products during the calendar years 1967 through 1971; or

(ii) the average profit obtained by the particular seller for such products during such calendar years.

(7) Except as provided in paragraph (6), for the purposes of this subsection, the term "windfall profits" means profit in excess of the average profit obtained by all sellers for such products during the calendar years 1967 through 1971.

(8) For the purposes of this subsection, the term "interested person" includes the United States, any State, and the District of Columbia.

(9) This subsection shall not apply to the first sale of crude oil described in subsection (c) (2) of this section (relating to stripper wells).

(10) This section shall take effect on January 1, 1975, and shall apply to profits attributable to any price (specified under any of the authorities referred to in paragraph (1) of this subsection) of crude oil, residual fuel oil, and refined petroleum products in effect after December 31, 1973.

(b) Notwithstanding any other provision of law, administrative proceedings before the Board under this section shall be governed by subchapter II of chapter 5 of title 5, United States Code, and such proceedings shall be reviewed in accordance with chapter 7 of such title.

SEC. 111. PROTECTION OF FRANCHISED DEALERS.

(a) As used in this section:

(1) The term "distributor" means a person engaged in the sale, consignment, or distribution of petroleum products to wholesale or retail outlets whether or not it owns, leases, or in any way controls such outlets.

(2) The term "franchise" means any agreement or contract between a refiner or a distributor and a retailer or between a refiner and a distributor, under which such retailer or distributor is granted authority to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or distributor, or any agreement or contract between such parties under which such retailer or distributor is granted authority to occupy premises owned, leased, or in any way controlled by a party to such

agreement or contract, for the purpose of engaging in the distribution or sale of petroleum products for purposes other than resale.

(3) The term "notice of intent" means a written statement of the alleged facts which, if true, constitute a violation of subsection (b) of this section.

(4) The term "refiner" means a person engaged in the refining or importing of petroleum products.

(5) The term "retailer" means a person engaged in the sale of any refined petroleum product for purposes other than resale within any State, either under a franchise or independent of any franchise, or who was so engaged at any time after the start of the base period.

(b)(1) A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless he furnishes prior notification pursuant to this paragraph to each distributor or retailer affected thereby. Such notification shall be in writing and sent to such distributor or retailer by certified mail not less than ninety days prior to the date on which such franchise will be canceled, not renewed, or otherwise terminated. Such notification shall contain a statement of intention to cancel, not renew, or to terminate together with the reasons therefor, the date on which such action shall take effect, and a statement of the remedy or remedies available to such distributor or retailer under this section together with a summary of the applicable provisions of this section.

(2) A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless the retailer or distributor whose franchise is terminated failed to comply substantially with any essential and reasonable requirement of such franchise or failed to act in good faith in carrying out the terms of such franchise, or unless such refiner or distributor withdraws entirely from the sale of refined petroleum products in commerce for sale other than resale in the United States.

(c)(1) If a refiner or distributor engages in conduct prohibited under subsection (b) of this section, a retailer or a distributor may maintain a suit against such refiner or distributor. A retailer may maintain such suit against a distributor or a refiner whose actions affect commerce and whose products with respect to conduct prohibited under paragraphs (1) or (2) of subsection (b) of this section, he sells or has sold, directly or indirectly, under a franchise. A distributor may maintain such suit against a refiner whose actions affect commerce and whose products he purchases or has purchased or whose products he distributes or has distributed to retailers.

(2) The court shall grant such equitable relief as is necessary to remedy the effects of conduct prohibited under subsection (b) of this section which it finds to exist including declaratory judgment and mandatory or prohibitive injunctive relief. The court may grant interim equitable relief, and actual and punitive damages (except for actions for a failure to renew) where indicated, in suits under this section, and may, unless such suit is frivolous, direct that costs, including reasonable attorney and expert witness fees, be paid by the defendant. In the case of actions for a failure to renew damages shall be limited to actual damages including the value of the dealer's equity.

(3) A suit under this section may be brought in the district court of the United States for any judicial district in which the distributor or the refiner against whom such suit is maintained resides, is found, or is doing business, without regard to the amount in controversy. No such suit shall be maintained unless commenced within three years after the cancellation, failure to renew, or termination of such franchise or the modification thereof.

SEC. 112. PROHIBITIONS ON UNREASONABLE ACTIONS.

(a) Action taken under authority of this Act, the Emergency Petroleum Allocation Act of 1973, or other Federal law resulting in the allocation of petroleum products and electrical energy among classes of users or resulting in restrictions on use of petroleum products and electrical energy, shall be equitable, shall not be arbitrary or capricious, and shall not unreasonably discriminate among classes of users: Provided, That with respect to allocations of petroleum products applicable to the foreign trade and commerce of the United States, no foreign corporation or entity shall receive more favorable treatment in the allocation of petroleum products than that which is accorded by its home country to United States citizens engaged in the same line of commerce, and allocations shall contain provisions designed to foster reciprocal and non-discriminatory treatment by foreign countries of United States citizens engaged in foreign commerce.

(b) To the maximum extent practicable, any restriction on the use of energy shall be designed to be carried out in such manner so as to be fair and to create a reasonable distribution of the burden of such restriction on all sectors of the economy, without imposing an unreasonably disproportionate share of such burden on any specific industry, business or commercial enterprise, or on any individual segment thereof and shall give due consideration to the needs of commercial, retail, and service establishments whose normal function is to supply goods and services of an essential convenience nature during times of day other than conventional daytime working hours.

SEC. 113. REGULATED CARRIERS.

(a) The Interstate Commerce Commission (with respect to common or contract carriers subject to economic regulation under the Interstate Commerce Act), the Civil Aeronautics Board, and the Federal Maritime Commission shall, for the duration of the period beginning on the date of enactment of this Act and ending on May 15, 1975, have authority to take any action for the purpose of conserving energy consumption in a manner found by such Commission or Board to be consistent with the objectives and purposes of the Acts administered by such Commission or Board on its own motion or on the petition of the Administrator which existing law permits such Commission or Board to take upon the motion or petition of any regulated common or contract carrier or other person.

(b) The Interstate Commerce Commission shall, by expedited proceedings, adopt appropriate rules under the Interstate Commerce Act which eliminate restrictions on the operating authority of any motor common carrier of property which require excessive travel between

points with respect to which such motor common carrier has regularly performed service under authority issued by the Commission. Such rules shall assure continuation of essential service to communities served by any such motor common carrier.

(c) Within 45 days after the date of enactment of this Act, the Civil Aeronautics Board, the Federal Maritime Commission, and the Interstate Commerce Commission shall report separately to the appropriate committees of the Congress on the need for additional regulatory authority in order to conserve fuel during the period beginning on the date of enactment of this Act and ending on May 15, 1975 while continuing to provide for the public convenience and necessity. Each such report shall identify with specificity—

(1) the type of regulatory authority needed;

(2) the reasons why such authority is needed;

(3) the probable impact on fuel conservation of such authority;

(4) the probable effect on the public convenience and necessity of such authority; and

(5) the competitive impact, if any, of such authority.

Each such report shall further make recommendations with respect to changes in any existing fuel allocation programs which are deemed necessary to provide for the public convenience and necessity during such period.

SEC. 114. ANTITRUST PROVISIONS.

(a) Except as specifically provided in subsection (i), no provision of this Act shall be deemed to convey to any person subject to this Act any immunity from civil and criminal liability or to create defenses to actions, under the antitrust laws.

(b) As used in this section, the term "antitrust laws" means—

(1) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(4) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(c)(1) To achieve the purposes of this Act, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. Any such advisory committees shall be subject to the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. App. I), whether or not such Act or any of its provisions expires or terminates during the term of this Act or of such committees, and in all cases shall be chaired by a regular full-time Federal employee and shall include representatives of the public. The meetings of such committees shall be open to the public.

(2) A representative of the Federal Government shall be in attendance at all meetings of any advisory committee established pursuant to this section. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(3) A full and complete verbatim transcript shall be kept of all advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of sections 552 (b)(1) and (b)(3) of title 5, United States Code.

(d) The Administrator, subject to the approval of the Attorney General and the Federal Trade Commission, shall promulgate, by rule, standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing crude oil, residual fuel oil or any refined petroleum product may develop and implement voluntary agreements and plans of action to carry out such agreements which the Administrator determines are necessary to accomplish the objectives stated in section 4(b) of the Emergency Petroleum Allocation Act of 1973.

(e) The standards and procedures under subsection (d) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that—

(1) Such agreements and plans of action shall be developed by meetings of committees, councils, or other groups which include representatives of the public, of interested segments of the petroleum industry and of industrial, municipal and private consumers, and shall in all cases be chaired by a regular full-time Federal employee.

(2) Meetings held to develop a voluntary agreement or a plan of action under this subsection shall permit attendance by interested persons and shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission and to the public in the affected community;

(3) Interested persons shall be afforded an opportunity to present, in writing and orally, data, views and arguments at such meetings;

(4) A full and complete verbatim transcript shall be kept of any meeting, conference or communication held to develop, implement or carry out a voluntary agreement or a plan of action under this subsection and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be available for public inspection and copying, subject to provisions of section 552 (b)(1) and (b)(3) of title 5, United States Code.

(f) The Federal Trade Commission may exempt types or classes of meetings, conferences or communications from the requirements of subsection (c)(3) and (e)(4) provided such meetings, conferences, or communications are ministerial in nature and are for the sole purpose of implementing or carrying out a voluntary agreement or plan of

action authorized pursuant to this section. Such ministerial meeting, conference or communication may take place in accordance with such requirements as the Federal Trade Commission may prescribe by rule. Such persons participating in such meeting, conference or communication shall cause a record to be made specifying the date such meeting, conference, or communication took place and the persons involved, and summarizing the subject matter discussed. Such record shall be filed with the Federal Trade Commission and the Attorney General, where it shall be made available for public inspection and copying.

(g) (1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, implementation and carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this Act. Each shall have the right to review, amend, modify, disapprove, or prospectively revoke, on its own motion or upon the request of any interested person, any plan of action or voluntary agreement at any time, and, if revoked, thereby withdraw prospectively the immunity conferred by subsection (i) of this section.

(2) Any voluntary agreement or plan of action entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission 20 days before being implemented, where it shall be made available for public inspection and copying.

(h) (1) The Attorney General and the Federal Trade Commission shall monitor the development, implementation and carrying out of plans of action and voluntary agreements authorized under this section to assure the protection and fostering of competition and the prevention of anticompetitive practices and effects.

(2) The Attorney General and the Federal Trade Commission shall promulgate joint regulations concerning the maintenance of necessary and appropriate documents, minutes, transcripts and other records related to the development, implementation or carrying out of plans of action or voluntary agreements authorized pursuant to this Act.

(3) Persons developing, implementing or carrying out plans of action or voluntary agreements authorized pursuant to this Act shall maintain those records required by such joint regulations. The Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and upon reasonable notice.

(4) The Federal Trade Commission and the Attorney General may each prescribe such rules and regulations as may be necessary or appropriate to carry out their responsibilities under this Act. They may both utilize for such purposes and for purposes of enforcement, any and all powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law, including the antitrust laws; and wherever such provision of law refers to "the purposes of this Act" or like terms, the reference shall be understood to be this Act.

(i) There shall be available as a defense to any civil or criminal action brought under the antitrust laws in respect of actions taken in good faith to develop and implement a voluntary agreement or plan

of action to carry out a voluntary agreement by persons engaged in the business of producing, refining, marketing or distributing crude oil, residual fuel oil, for any refined petroleum product that—

(1) such action was—

(A) authorized and approved pursuant to this section, and

(B) undertaken and carried out solely to achieve the purposes of this section and in compliance with the terms and conditions of this section, and the rules promulgated hereunder; and

(2) such persons fully complied with the requirements of this section and the rules and regulations promulgated hereunder.

(j) No provision of this Act shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred: (1) prior to the enactment of this Act, (2) outside the scope and purpose or not in compliance with the terms and conditions of this Act and this section, or (3) subsequent to its expiration or repeal.

(k) Effective on the date of enactment of this Act, this section shall apply in lieu of section 6(c) of the Emergency Petroleum Allocation Act of 1973. All actions taken and any authority or immunity granted under such section 6(c) shall be hereafter taken or granted, as the case may be, pursuant to this section.

(l) The provisions of section 708 of the Defense Production Act of 1950, as amended, shall not apply to any action authorized to be taken under this Act or the Emergency Petroleum Allocation Act of 1973.

(m) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every six months, a report on the impact on competition and on small business of actions authorized by this section.

(n) The authority granted by this section (including any immunity under subsection (i)) shall terminate on May 15, 1975.

(o) The exercise of the authority provided in section 113 shall not have as a principal purpose or effect the substantial lessening of competition among carriers affected. Actions taken pursuant to that subsection shall be taken only after providing from the beginning an adequate opportunity for participation by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division, who shall propose any alternative which would avoid or overcome, to the greatest extent practicable, any anticompetitive effects while achieving the purposes of this Act.

SEC. 115. EXPORTS.

To the extent necessary to carry out the purpose of this Act, the Administrator may under authority of this Act, by rule, restrict exports of coal, petroleum products, and petrochemical feedstocks, under such terms as he deems appropriate: Provided, That, the Administrator shall restrict exports of coal, petroleum products, or petrochemical feedstocks if either the Secretary of Commerce or the Secretary of Labor certifies that such exports would contribute to unemployment in the United States. The Secretary of Commerce, pursuant to the Export Administration Act of 1969 (but without regard to the phrase "and to reduce the serious inflationary impact of abnormal foreign de-

mand" in section 3(2)(A) of such Act), may restrict the exports of coal, petroleum products, and petrochemical feedstocks, and of materials and equipment essential to the production, transport, or processing of fuels to the extent necessary to carry out the purpose of this Act and sections 4(b) and 4(d) of the Emergency Petroleum Allocation Act of 1973: Provided, That in the event that the Administrator certifies to the Secretary of Commerce that export restrictions of products enumerated in this section are necessary to carry out the purpose of this Act, the Secretary of Commerce shall impose such export restrictions. Rules under this section by the Administrator and actions by the Secretary of Commerce under the Export Administration Act of 1969 shall take into account the historical trading relations of the United States with Canada and Mexico and shall not be inconsistent with subsections (b) and (d) of section 4 of the Emergency Petroleum Allocation Act of 1973.

SEC. 116. EMPLOYMENT IMPACT AND UNEMPLOYMENT ASSISTANCE.

(a) The President shall take into consideration and shall minimize, to the fullest extent practicable, any adverse impact of actions taken pursuant to this Act upon employment. All agencies of government shall cooperate fully under their existing statutory authority to minimize any such adverse impact.

(b) The President shall make grants to States to provide to any individual unemployed, if such unemployment resulted from the administration and enforcement of this Act and was in no way due to the fault of such individual, such assistance as the President deems appropriate while such individual is unemployed. Such assistance as a State shall provide under such a grant shall be available to individuals not otherwise eligible for unemployment compensation and individuals who have otherwise exhausted their eligibility for such unemployment compensation, and shall continue as long as unemployment in the area caused by such administration and enforcement continues (but not less than six months) or until the individual is reemployed in a suitable position, but not longer than two years after the individual becomes eligible for such assistance. Such assistance shall not exceed the maximum weekly amount under the unemployment compensation program of the State in which the employment loss occurred.

(c) On or before the sixtieth day following the date of enactment of this Act, the President shall report to the Congress concerning the present and prospective impact of energy shortages upon employment. Such report shall contain an assessment of the adequacy of existing programs in meeting the needs of adversely affected workers and shall include legislative recommendations which the President deems appropriate to meet such needs, including revisions in the unemployment insurance laws.

SEC. 117. USE OF CARPOOLS.

(a) The Secretary of Transportation shall encourage the creation and expansion of the use of carpools as a viable component of our nationwide transportation system. It is the intent of this section to maximize the level of carpool participation in the United States.

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(b) The Secretary of Transportation is directed to establish within the Department of Transportation an "Office of Carpool Promotion" whose purpose and responsibilities shall include—

(1) responding to any and all requests for information and technical assistance on carpooling and carpooling systems from units of State and local governments and private groups and employees;

(2) promoting greater participation in carpooling through public information and the preparation of such materials for use by State and local governments;

(3) encouraging and promoting private organizations to organize and operate carpool systems for employees;

(4) promoting the cooperation and sharing of responsibilities between separate, yet proximately close, units of government in coordinating the operations of carpool systems; and

(5) promoting other such measures that the Secretary determines appropriate to achieve the goal of this subsection.

(c) The Secretary of Transportation shall encourage and promote the use of incentives such as special parking privileges, special roadway lanes, toll adjustments, and other incentives as may be found beneficial and administratively feasible to the furtherance of carpool ridership, and consistent with the obligations of the State and local agencies which provide transportation services.

(d) The Secretary of Transportation shall allocate the funds appropriated pursuant to the authorization of subsection (f) according to the following distribution between the Federal and State or local units of government:

(1) The initial planning process—up to 100 percent Federal.

(2) The systems design process—up 100 percent Federal.

(3) The initial startup and operation of a given system—60 percent Federal and 40 percent State or local with the Federal portion not to exceed 1 year.

(e) Within 12 months of the date of enactment of this Act, the Secretary of Transportation shall make a report to Congress of all his activities and expenditures pursuant to this section. Such report shall include any recommendations as to future legislation concerning carpooling.

(f) The sum of $5,000,000 is authorized to be appropriated for the conduct of programs designed to achieve the goals of this section, such authorization to remain available for 2 years.

(g) For purposes of this section, the terms "local governments" and "local units of government" include any metropolitan transportation organization designated as being responsible for carrying out section 134 of title 23, United States Code.

(h) As an example to the rest of our Nation's automobile users, the President of the United States shall take such action as is necessary to require all agencies of Government, where practical, to use economy model motor vehicles.

(i)(1) The President shall take action to require that no Federal official or employee in the executive branch below the level of Cabinet officer be furnished a limousine for individual use. The provisions of

this subsection shall not apply to limousines furnished for use by officers or employees of the Federal Bureau of Investigation, or to those persons whose assignments necessitate transportation by limousines because of diplomatic assignment by the Secretary of State.

(2) For purposes of this subsection, the term "limousine" means a type 6 vehicle as defined in the Interim Federal Specifications issued by the General Services Administration, December 1, 1973.

SEC. 118. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.

(a) (1) Subject to paragraphs (2), (3), and (4) of this subsection, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply to any rule or order (including a rule or order issued by a State or officer thereof) under this title (except with respect to any rule or order pursuant to sections 108 and 113 of this Act, section 205 (a), (b), and (c), of this Act, or section 4(h) of the Emergency Petroleum Allocation Act of 1973) or under the authority of any energy conservation plan.

(2) Notice of any proposed rule or order described in paragraph (1) shall be given by publication of such proposed rule or order in the Federal Register. In each case, a minimum of ten days following such publication shall be provided for opportunity to comment; except that the requirements of this paragraph as to time of notice and opportunity to comment may be waived where strict compliance is found to cause serious impairment to the operation of the program to which such rule or order relates and such findings are set out in detail in such rule or order. In addition, public notice of all rules or orders promulgated by officers of a State or political subdivision thereof or to State or local boards pursuant to this Act shall to the maximum extent practicable be achieved by publication of such rules or orders in a sufficient number of newspapers of statewide circulation calculated to receive widest possible notice.

(3) In addition to the requirements of paragraph (2), if any rule or order described in paragraph (1) is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the implementation of such rule or order, but in all cases such opportunity shall be afforded no later than 45 days after the implementation of any such rule or order. A transcript shall be kept of any oral presentation.

(4) Any officer or agency authorized to issue rules or orders described in paragraph (1) shall provide for the making of such adjustments, consistent with the other purposes of this Act or the Emergency Petroleum Allocation Act of 1973 (as the case may be), as may be necessary to prevent special hardships, inequity, or an unfair distribution of burdens and shall in rules prescribed by it establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, or an exception to or exemption from, such rules and orders. If such person is aggrieved or adversely affected by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the officer or agency

and may obtain judicial review in accordance with subsection (b) when such denial becomes final. The officer or agency shall, in rules prescribed by it, establish appropriate procedures, including a hearing where deemed advisable, for considering such requests for action under this paragraph.

(5) In addition to the requirements of section 552 of title 5, United States Code, any agency authorized by this Act or the Emergency Petroleum Allocation Act of 1973 to issue rules or orders shall make available to the public all internal rules and guidelines which may form the basis, in whole or in part, for any rule or order with such modifications as are necessary to insure confidentiality protected under such section 552. Such agency shall, upon written request of a petitioner filed after any grant or denial of a request for exception or exemption from rules or orders furnish the petitioner with a written opinion setting forth applicable facts and the legal basis in support of such grant or denial. Such opinions shall be made available to the petitioner and the public within thirty days of such request and with such modifications as are necessary to insure confidentiality of information protected under such section 552.

(b) (1) Judicial review of administrative rulemaking of general and national applicability done under this Act may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days from the date of promulgation of any such rule or regulation, and judicial review of administrative rulemaking of general, but less than national, applicability done under this Act may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule or regulation, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule or regulation is to have effect.

(2) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising under this Act, or under regulations or orders issued thereunder, except any actions taken by the Civil Aeronautics Board, the Interstate Commerce Commission, Federal Power Commission, or the Federal Maritime Commission, or any actions taken to implement or enforce any rule or order by any officer of a State or political subdivision thereof or State or local board which has been delegated authority under section 122 of this Act except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the constitutionality of this title or the validity of action taken by any agency under this Act). If in any such proceeding an issue by way of defense is raised based on the constitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code. Cases or controversies arising under any rule or order of any officer of a State or political subdivision thereof or a State or local board may be heard in either (1) any appropriate State court,

and (2) without regard to the amount in controversy, the district courts of the United States.

(c) The Administrator may by rule prescribe procedures for State or local boards which carry out functions under this Act or the Emergency Petroleum Allocation Act of 1973. Such procedures shall apply to such boards in lieu of subsection (a), and shall require that prior to taking any action, such boards shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) at least 10 days before taking the action. Such boards shall be of balanced composition reflecting the makeup of the community as a whole.

SEC. 119. PROHIBITED ACTS.

It shall be unlawful for any person to violate any provision of title I of this Act (other than provisions of this Act which make amendments to the Emergency Petroleum Allocation Act of 1973 and section 113) or to violate any rule, regulation (including an energy conservation plan) or order issued pursuant to any such provision.

SEC. 120. ENFORCEMENT.

(a) Whoever violates any provision of section 119 shall be subject to a civil penalty of not more than $2,500 for each violation.

(b) Whoever willfully violates any provision of section 119 shall be fined not more than $5,000 for each violation.

(c) It shall be unlawful for any person to offer for sale or distribute in commerce any product or commodity in violation of an applicable order or regulation issued pursuant to this Act. Any person who knowingly and willfully violates this subsection after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to this Act shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(d) Whenever it appears to any person authorized by the Administrator to exercise authority under this Act that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of section 119, such person may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by section 119.

(e) Any person suffering legal wrong because of any act or practice arising out of any violation of section 119 may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this subsection shall authorize any person to recover damages.

SEC. 121. USE OF FEDERAL FACILITIES.

Whenever practicable, and for the purpose of facilitating the transportation and storage of fuel, agencies or departments of the United States are authorized, during the period beginning on the date of en-

actment of this Act and ending May 15, 1975, to enter into arrangements for the acquisition or use by domestic public entities and private industries of equipment or facilities which are surplus to the needs of such agency or department and appropriate to the transportation and storage of fuel, except that such arrangements may be made (1) only after the Administrator finds that such equipment or facilities are not available from private sources and (2) only on the basis of compensation for the acquisition or use of such equipment or facilities at fair market value prices or rentals.

SEC. 122. DELEGATION OF AUTHORITY AND EFFECT ON STATE LAW.

(a) The Administrator may delegate any of his functions under the Emergency Petroleum Allocation Act of 1973 or this Act to any officer or employee of the Federal Energy Emergency Administration as he deems appropriate. The Administrator may delegate any of his functions relative to implementation and enforcement of the Emergency Petroleum Allocation Act of 1973 or this Act to officers of a State or political subdivision thereof or to State or local boards of balanced composition reflecting the make-up of the community as a whole. Such officers or boards shall be designated and established in accordance with regulations as the Administration shall promulgate under this Act. Section 5(b) of the Emergency Petroleum Allocation Act of 1973 is repealed effective on the effective date of the transfer of functions under such Act to the Administrator pursuant to section 103 of this Act.

(b) No State law or State program in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation, order, or energy conservation plan issued pursuant to this Act except insofar as such State law or State program is inconsistent with the provisions of this Act, or such a regulation, order, or plan.

SEC. 123. GRANTS TO STATES.

Any funds authorized to be appropriated under section 127(b) shall be available for the purpose of making grants to States to which the Administrator has delegated authority under section 122 of this Act, or for the administration of appropriate State or local energy conservation programs which are the basis of an exemption made pursuant to section 105(a)(2) of this Act from a Federal energy conservation plan which has taken effect under section 105 of this Act. The Administrator shall make such grants upon such terms and conditions as he may prescribe by rule.

SEC. 124. REPORTS ON NATIONAL ENERGY RESOURCES.

(a) For the purpose of providing to the Administrator, Congress, the States, and the public, to the maximum extent possible, reliable data on reserves, production, distribution, and use of petroleum products, natural gas, and coal, the Administrator shall promptly publish for public comment a regulation requiring that persons doing business in the United States, who, on the effective date of this Act, are engaged in exploring, developing, processing, refining, or transporting by pipeline, any petroleum product, natural gas, or coal, shall provide detailed reports to the Administrator every sixty calendar

days. Such reports shall show for the preceding sixty calendar days such person's (1) reserves of crude oil, natural gas, and coal: (2) production and destination of any petroleum product, natural gas, and coal; (3) refinery runs byproduct; and (4) other data required by the Administrator for such purpose. Such regulation shall also require that such persons provide to the Administrator such reports for the period from January 1, 1970, to the date of such person's first sixty day report. Such regulation shall be promulgated 30 days after such publication. The Administrator shall publish quarterly in the Federal Register a meaningful summary analysis of the data provided by such reports.

(b) The reporting requirements of this section shall not apply to the retail operations of persons required to file such reports. Where a person shows that all or part of the data required by this section is being reported by such person to another Federal agency, the Administrator may exempt such person from reporting all or part of such data directly to him, and upon such exemption, such agency shall, notwithstanding any other provision of law, provide such data to the Administrator. The district courts of the United States are authorized, upon application of the Administrator, to require enforcement of such reporting requirements.

(c) Upon a showing satisfactory to the Administrator by any person that any report or part thereof obtained under this section from such person or from a Federal agency would, if made public, divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person, such report, or portion thereof, shall be confidential in accordance with the provisions of section 1905 of title 18 of the United States Code, except that such report or part thereof shall not be deemed confidential for purposes of disclosure to (1) any delegate of the Federal Energy Emergency Administration for the purpose of carrying out this Act, (2) the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the General Accounting Office when necessary to carry out those agencies' duties and responsibilities under this and other statutes, and (3) the Congress or any Committee of Congress upon request of the Chairman. The provisions of this section shall expire on May 15, 1975.

SEC. 125. INTRASTATE GAS.

Nothing in this Act shall expand the authority of the Federal Power Commission with respect to sales of non-jurisdictional natural gas.

SEC. 126. EXPIRATION.

The authority under this title to prescribe any rule or order or take other action under this title, or to enforce any such rule or order, shall expire at midnight, May 15, 1975, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, May 15, 1975.

SEC. 127. AUTHORIZATION OF APPROPRIATIONS.

(a) There are authorized to be appropriated to the Federal Energy Emergency Agency to carry out its functions under this Act and

under other laws, and to make grants to States under section 123, $75,000,000 for the fiscal year ending June 30, 1974, and $75,000,000 for the fiscal year ending June 30, 1975.

(b) For the purpose of making payments under grants to States under section 123, there are authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1974, and $75,000,000 for the fiscal year ending June 30, 1975.

(c) For the purpose of making payments under grants to States under section 116, there is authorized to be appropriated $500,000,000 for the fiscal year ending June 30, 1974.

SEC. 128. SEVERABILITY.

If any provision of this Act, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 129. PRICE AUTHORITY.

The President shall exercise his authority under the Economic Stabilization Act of 1970, as amended, and the Emergency Petroleum Allocation Act of 1973 to specify prices for sales of crude oil, residual fuel oil, or refined petroleum products in or imported into the United States which avoid windfall profits by sellers. For purposes of this section, windfall profits shall be defined as those profits which are excessive or unreasonable, taking into consideration normal profit levels. This section shall be effective only until December 31, 1974.

SEC. 130. IMPORTATION OF LIQUEFIED NATURAL GAS.

The Emergency Petroleum Allocation Act of 1973 is amended by adding at the end thereof the following new section:

"SEC. 8. Notwithstanding the provisions of section 3 of the Natural Gas Act (or any other provisions of law) the President may by order, on a finding that such action would be consistent to the public interest, authorize on a shipment-by-shipment basis the importation of liquefied natural gas from a foreign country: Provided, however, That the authority to act under this section shall not permit the importation of liquefied natural gas which had not been authorized prior to the date of expiration of this Act and which is in transit on such date."

TITLE II—COORDINATION WITH ENVIRONMENTAL PROTECTION REQUIREMENTS

SEC. 201. SUSPENSION AUTHORITY.

Title I of the Clean Air Act (42 U.S.C. 1857 et seq.) is amended by adding at the end thereof the following new section:

"ENERGY EMERGENCY AUTHORITY

SEC. 119. (a)(1)(A) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before November 1, 1974, temporarily suspend any stationary source fuel or emission limitation as it applies to any person, if the Administrator finds that such person will be unable to comply with such limitation during such period solely because of unavailability of types or amounts of fuels. Any suspension under this paragraph and

any interim requirement on which such suspension is conditioned under paragraph (3) shall be exempted from any procedural requirements set forth in this Act or in any other provision of local, State, or Federal law; except as provided in subparagraph (B).

"(B) The Administrator shall give notice to the public of a suspension and afford the public an opportunity for written and oral presentation of views prior to granting such suspension unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In in any case, before granting such a suspension he shall give actual notice to the Governor of the State, and to the chief executive officer of the local government entity in which the affected source or sources are located. The granting or denial of such suspension and the imposition of an interim requirement shall be subject to judicial review only on the grounds specified in paragraphs (2)(B) and (2)(C) of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304(a)(2) or 307(b) and (c) of this Act.

"(2) In issuing any suspension under paragraph (1) the Administrator is authorized to act on his own motion without application by any source or State.

"(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the source receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and (C) requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available to that person (as determined by the Administrator). For purposes of clause (C) of this paragraph, availability of natural gas or petroleum products which enable compliance shall not make a suspension inapplicable to a source described in subsection (b)(1) of this section.

"(4) For purposes of this section:

"(A) The term 'stationary source fuel or emission limitation' means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under this Act (other than section 303, 111(b), or 112) or contained in an applicable implementation plan and which is designed to limit stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type or grade or pollution characteristic thereof.

"(B) The term 'stationary source' has the same meaning as such term has under section 111(a)(3).

"(b)(1) Except as provided in paragraph (2) of this subsection, any fuel-burning stationary source (A) which is prohibited from using petroleum products or natural gas as fuel by reason of an order issued under section 106(a) of the Energy Emergency Act, or which the Administrator determines began conversion to the use of coal as fuel during the 90-day period ending on December 15, 1973, and (B) which converts to the use of coal as fuel, shall not, until January 1, 1979, be

prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source.

"(2)(A) *Paragraph (1) of this subsection shall apply to a source, only if the Administrator finds that emissions from the source will not materially contribute to a significant risk to public health and if the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved, after notice to interested persons and opportunity for presentation of views (including oral presentations of views). A plan submitted under the preceding sentence shall be approved only if it provides (i) for compliance by the means; and in accordance with a schedule which meets the requirements of subparagraph (B), and (ii) that such source will comply with requirements which the Administrator shall prescribe to assure that emissions from such source will not materially contribute to a significant risk to public health. The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.*

"(B) *The Administrator shall prescribe regulations requiring that any source to which this subsection applies submit and obtain approval of its means for and schedule of compliance. Such regulations shall include requirements that such schedules shall include dates by which such source must (i) enter into contracts or other enforceable obligations for obtaining a long-term supply of coal or coal by-products (which contracts or obligations must have received prior approval of the Administrator), and (ii) take steps to obtain continuous emission reduction systems necessary to permit such source to burn such coal or coal by-products and to achieve the degree of emission reduction required by the following sentence. (Which steps and systems must have received prior approval of the Administrator). Such regulations shall also require that the source achieve as expeditiously as practicable considering the type of coal to be used (but not later than January 1, 1979) the same degree of emission reduction as it was required to achieve by the applicable implementation plan in effect on the date of enactment of this section. Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable including requirements described in clauses (A) and (B) of subsection (a)(3).*

"(C) *The Administrator (after notice to interested persons and opportunity for presentation of views, including oral presentations of views, to the extent practicable) (i) may, prior to November 1, 1974, and shall thereafter prohibit the use of coal by a source to which paragraph (1) applies if he determines that the use of coal by such source is likely to materially contribute to a significant risk to public health; and (ii) may require such source to use coal of any particular type, grade, or pollution characteristic if such coal is available to such source. Nothing in this subsection (b) shall prohibit a State or local agency from taking action which the Administrator is authorized to take under this paragraph.*

"(3) *For purposes of this subsection, the term "air pollution requirement" means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including this Act (except for any requirement prescribed under this subsection or section 303), and which is designed to limit stationary source emissions resulting from*

combustion of fuels (including a restriction on the use or content of fuels). A conversion to coal to which this subsection applies shall not be deemed to be a modification for purposes of section 111(a)(2) and (4) of this Act.

"(4) A source to which this subsection applies may, upon the expiration of the exemption under paragraph (1), obtain a one year postponement of the application of any requirement of an applicable implementation plan under the conditions and in the manner provided in section 110(f).

"(c) The Administrator may by rule establish priorities under which manufacturers of continuous emission reduction systems shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to users in air quality control regions with the most severe air pollution. No rule under this subsection may impair the obligation of any contract entered into before enactment of this section. No State or political subdivision may require any person to use a continuous emission reduction system for which priorities have been established under this subsection except in accordance with such priorities.

"(d) The Administrator shall study, and report to Congress not later than May 31, 1974, with respect to—

"(1) the present and projected impact on the program under this Act of fuel shortages and of allocation and end-use allocation programs;

"(2) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction systems would have on the total environment and on supplies of fuel and electricity;

"(3) the number of sources and locations which must use such technology based on projected fuel availability data;

"(4) priority schedule for implementation of continuous emission reduction technology, based on public health or air quality;

"(5) evaluation of availability of technology to burn municipal solid waste in these sources; including time schedules, priorities analysis of unregulated pollutants which will be emitted and balancing of health benefits and detriments from burning solid waste and of economic costs;

"(6) projections of air quality impact of fuel shortages and allocations;

"(7) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time frames prescribed in the Act, including associated considerations of cost, time frames, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

"(8) proposed allocations of continuous emission reduction technology for nonsolid waste producing systems to sources which are least able to handle solid waste byproduct, technologically, economically, and without hazard to public health, safety, and welfare; and

"(9) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentration of sulfur dioxide in the ambient air.

"(e) No State or political subdivision may require any person to whom a suspension has been granted under subsection (a) to use any fuel the unavailability of which is the basis of such person's suspension (except that this preemption shall not apply to requirements identical to Federal interim requirements under subsection (a)(1)).

"(f)(1) It shall be unlawful for any person to whom a suspension has been granted under subsection (a)(1) to violate any requirement on which the suspension is conditioned pursuant to subsection (a)(3).

"(2) It shall be unlawful for any person to violate any rule under subsection (c).

"(3) It shall be unlawful for the owner or operator of any source to fail to comply with any requirement under subsection (b) or any regulation, plan, or schedule thereunder.

"(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i)(3).

"(g) Beginning January 1, 1975, the Administrator shall publish at no less than 180-day intervals, in the Federal Register the following:

"(1) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (b) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsections.

"(2) Up-to-date findings on the impact of this section upon—

"(A) applicable implementation plans, and

"(B) ambient air quality.

"(h) Nothing in this section shall affect the power of the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.

"(i)(1) In order to reduce the likelihood of early phaseout of existing electric generating facilities during the energy emergency, any electric generating power plant (A) which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on the date of enactment of the Energy Emergency Act) of the operator of such plant, (B) for which a certification to that effect has been filed by the operator of the plant with the Environmental Protection Agency and the Federal Power Commission, and (C) for which the Commission has determined that the certification has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single one-year postponement as provided in paragraph (2).

"(2) Prior to the date on which any plant eligible under paragraph (1) is required to comply with any requirement of an applicable implementation plan, such source may apply (with the concurrence of the Governor of the State in which the plant is located) to the Administrator to postpone the applicability of such requirement to such source for not more than one year. If the Administrator determines, after balancing the risk to public health and welfare which may be associated with a postponement, that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increases to pay for such costs, and

other appropriate factors, then the Administrator shall grant a postponement of any such requirements.

"(3) The Administrator shall, as a condition of any postponement under paragraph (2), prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph (2).

"(j)(1) The Administrator may, after public notice and opportunity for presentation of views in accordance with section 553 of title 5, United States Code, and after consultation with the Federal Energy Emergency Administration, designate persons to whom fuel exchange orders should be issued. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any suspension under subsection (a) of this section or conversion to coal to which subsection (b) applies or of any allocation under the Energy Emergency Act or the Emergency Petroleum Allocation Act.

"(2) The Administrator of the Federal Energy Administration shall issue exchange orders to such persons as are designated by the Administrator under paragraph (1) requiring the exchange of any fuel subject to allocation under the preceding Acts effective no later than 45 days after the date of the designation under paragraph (1), unless the Administrator of the Federal Energy Administration determines, after consultation with the Administrator, that the costs or consumption of fuel, resulting from such exchange order, will be excessive.

"(3) Violation of any exchange order issued under paragraph (2) shall be a prohibited act and shall be subject to enforcement action and sanctions in the same manner and to the same extent as a violation of any requirement of the regulation under section 4 of the Emergency Petroleum Allocation Act of 1973."

SEC. 202. IMPLEMENTATION PLAN REVISIONS.

(a) Section 110(a) of the Clean Air Act is amended in paragraph (3) by inserting "(A)" after "(3)" and by adding at the end thereof the following new subparagraph:

"(B)(1) For any air quality control region in which there has been a conversion to coal under section 119(b), the Administrator shall review the applicable implementation plan and no later than one year after the date of such conversion determine whether such plan must be revised in order to achieve the national primary standard which the plan implements. If the Administrator determines that any such plan is inadequate, he shall require that a plan revision be submitted by the State within three months after the date of notice to the State of such determination. Any plan revision which is submitted by the State after notice and public hearing shall be approved or disapproved by the Administrator, after public notice and opportunity for public hearing, but no later than three months after the date required for submission of the revised plan. If a plan provision (or portion thereof) is disapproved (or if a State fails to submit a plan revision), the Administrator shall, after public notice and opportunity for a public hearing, promulgate a revised plan (or portion thereof) not later than three months after the date required for approval or disapproval.

"(2) Any requirement for a plan revision under paragraph (1) and any plan requirement promulgated by the Administrator under such paragraph shall include reasonable and practicable measures to mini-

mize the effect on the public health of any conversion to which section 119(b) applies."

(b) Subsection (c) of section 110 of the Clean Air Act (42 U.S.C. 1857 C–5) is amended by inserting "(1)" after "(c)"; by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and by adding the following new paragraph:

"(2)(A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than May 1, 1974, on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Administrator of the Federal Energy Administration, and the Chairman of the Council on Environmental Quality.

"(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subsection. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any applicable implementation plan submitted by a State on such plan's including a parking surcharge regulation.

"(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

"(D) For purposes of this paragraph, the term 'parking surcharge regulation' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles. The term 'management of parking supply' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations. The term 'preferential

bus/carpool lane' shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses and/or carpools."

SEC. 203. MOTOR VEHICLE EMISSIONS.

(a) Section 202(b)(1)(A) of the Clean Air Act is amended by striking out "1975" and inserting in lieu thereof "1977"; and by inserting after "(A)" the following: "The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5)(A) of this subsection for light-duty vehicles and engines manufactured during model year 1975."

(b) Section 202(b)(1)(B) of such Act is amended by striking out "1976" and inserting in lieu thereof "1978"; and by inserting after "(B)" the following: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that emissions of such vehicles and engines may not exceed 2.0 grams per vehicle mile."

(c) Section 202(b)(5)(A) of such Act is amended to read as follows:

"(5)(A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within 60 days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977."

(d) Section 202(b)(5)(B) of the Clean Air Act is repealed and the following subparagraphs redesignated accordingly.

SEC. 204. CONFORMING AMENDMENTS.

(a)(1) Section 113(a)(3) of the Clean Air Act is amended by striking out "or" before "112(c)", by inserting a comma in lieu thereof, and by inserting after "hazardous emissions)" the following: ", or 119(f) (relating to priorities and certain other requirements)".

(2) Section 113(b)(3) of such Act is amended by striking out "or 112(c)" and inserting in lieu thereof ", 112(c), or 119(f)".

(3) Section 113(c)(1)(C) of such Act is amended by striking out

"or section 112(c)" and inserting in lieu thereof ", section 112(c), or section 119(f)".

(4) Section 114(a) of such Act is amended by inserting "119 or" before "303".

(b) Section 116 of the Clean Air Act is amended by inserting "119(b), (c) and (e)," before "209".

SEC. 205. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT.

(a) Any allocation program provided for in title I of this Act or in the Emergency Petroleum Allocation Act of 1973, shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the country designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

(b) In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal pursuant to section 106, the Department of Health, Education, and Welfare shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c) No action taken under this Act shall, for a period of 1 year after initiation of such action, be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856). However, before any action under this Act that has a significant impact on the environment is taken, if practicable, or in any event within 60 days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102 (2) (C) of the National Environmental Policy Act, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a 30-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under this Act which will be in effect for more than a one year period (other than action taken pursuant to subsection (d) of this section) or any action to extend an action taken under this Act to a total period of more than 1 year shall be subject to the full provisions of the National Environmental Policy Act notwithstanding any other provision of this Act.

(d) Notwithstanding subsection (c) of this section, in order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission

is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 (83 Stat. 856) for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

SEC. 206. ENERGY CONSERVATION STUDY.

(a) The Administrator of the Federal Energy Administration shall conduct a study on potential methods of energy conservation and, not later than 6 months after the date of enactment of this Act, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

(1) the energy conservation potential of restricting exports of fuels or energy-intensive products or goods, including an analysis of balance of payments and foreign relations implications of any such restrictions;

(2) federally sponsored incentives for the use of public transit, including the need for authority to require additional production of buses or other means of public transit and Federal subsidies for the duration of the energy emergency for reduced fares and additional expenses incurred because of increased service;

(3) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource recovery in order to reduce energy demand, including the economic costs and fuel consumption trade-off which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials;

(4) the costs and benefits of electrifying rail lines in the United States with a high density of traffic; including (A) the capital costs of such electrification, the oil fuel economies derived from such electrification, the ability of existing power facilities to supply the additional power load, and the amount of coal or other fossil fuels required to generate the power required for railroad electrification, and (B) the advantages to the environment of electrification of railroads in terms of reduced fuel consumption and air pollution and disadvantages to the environment from increased use of fossil fuel such as coal; and

(5) means for incentives or disincentives to increase efficiency of industrial use of energy.

(b) Within 90 days of the date of enactment of this Act, the Secretary of Transportation, after consultation with the Federal Energy Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public mass transportation systems and encouraging increased ridership as alternatives to automobile travel.

(c) Such plan shall include, but shall not be limited to—

(1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the pro-

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vision of expanded mass transportation service in urban areas;

(2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under section 142(a) (2) of title 23, United States Code (the "Federal Aid Highway Act of 1973"), for the purpose of providing additional capacity for and encouraging increased use of public mass transportation systems;

(3) recommendations for a program of demonstration projects to determine the feasibility of fare-free and low-fare urban mass transportation systems, including reduced rates for elderly and handicapped persons during nonpeak hours of transportation;

(4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;

(5) recommendations on the feasibility of providing tax incentives for persons who use public mass transportation systems.

(d) In consultation with the Federal Energy Administrator, the Secretary of Transportation shall make an investigation and study for the purpose of conserving energy and assuring that the essential fuel needs of the United States will be met by developing a high-speed ground transportation system between the cities of Tijuana in the State of Baja California, Mexico, and Vancouver in the Province of British Columbia, Canada, by way of the cities of Seattle in the State of Washington, Portland in the State of Oregon, and Sacramento, San Francisco, Fresno, Los Angeles and San Diego in the State of California. In carrying out such investigation and study the Secretary shall consider, but shall not be limited to—

(1) the efficiency of energy utilization and impact on energy resources of such a system, including the future impact of existing transportation systems on energy resources if such a system is not established;

(2) coordination with other studies undertaken on the State and local level; and

(3) such other matters as he deems appropriate.

The Secretary of Transportation shall report the results of the study and investigation pursuant to this Act, together with his recommendations, to the Congress and the President no later than December 31, 1974.

SEC. 207. REPORTS.

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 201 through 205 of this title.

SEC. 208. FUEL ECONOMY STUDY.

Title II of the Clean Air Act is amended by redesignating section 213 as section 214 and by adding the following new section:

"FUEL ECONOMY IMPROVEMENT FROM NEW MOTOR VEHICLES

SEC. 213. (a) (1) The Administrator and the Secretary of Transportation shall conduct a joint study, and shall report to the Committee on Interstate and Foreign Commerce of the United States House of Rep-

resentatives and the Committees on Public Works and Commerce of the United States Senate within 120 days following the date of enactment of this section, concerning the practicability of establishing a fuel economy improvement standard of 20 percent for new motor vehicles manufactured during and after model year 1980. Such study and report shall include, but not be limited to, the technological problems of meeting any such standard, including the leadtime involved; the test procedures required to determine compliance; the economic costs associated with such standard, including any beneficial economic impact; the various means of enforcing such standard; the effect on consumption of natural resources, including energy consumed; and the impact of applicable safety and emission standards. In the course of performing such study, the Administrator and the Secretary of Transportation shall utilize the research previously performed in the Department of Transportation, and the Administrator and the Secretary shall consult with the Administrator of the Federal Energy Administration, the Chairman of the Council on Environmental Quality, and the Secretary of the Treasury. The Office of Management and Budget may review such report before its submission to Congress but the Office may not revise the report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting such report. In connection with such study, the Administrator may utilize the authority provided in section 307 (a) of this Act to obtain necessary information.

"(2) For the purpose of this section, the term 'fuel economy improvement standard' means a requirement of a percentage increase in the number of miles of transportation provided by a manufacturer's entire annual production of new motor vehicles per unit of fuel consumed, as determined for each manufacturer in accordance with test procedures established by the Administrator pursuant to this Act. Such term shall not include any requirement for any design standard or any other requirement specifying or otherwise limiting the manufacturer's discretion in deciding how to comply with the fuel economy improvement standard by any lawful means."

TITLE III—STUDIES AND REPORTS

SEC. 301. AGENCY STUDIES.

The following studies shall be conducted, with reports on their results submitted to the Congress:

(1) Within 30 days after the date of enactment of this Act:

(A) The Administrator of the Federal Energy Emergency Administration shall conduct a review of all rulings and regulations issued pursuant to the Economic Stabilization Act to determine if such rulings and regulations are contributing to the shortage of fuels and of materials associated with the production of energy supplies.

(B) All Federal departments and agencies, including the Federal regulatory agencies, are directed to undertake a survey of all activities over which they have special expertise or jurisdiction and identify and recommend to the Congress and to the President specific proposals to significantly increase energy supply or to reduce energy demand through conservation programs.

(C) The Secretary of the Treasury and the Director of the Cost of Living Council shall recommend to the Congress specific incentives to increase energy supply, reduce demand, to encourage private industry and individual persons to subscribe to the goals of this Act. This study shall also include an analysis of the price-elasticity of demand for gasoline.

(D) The Administrator shall report to the Congress concerning the present and prospective impact of energy shortages upon employment. Such report shall contain an assessment of the adequacy of existing programs in meeting the needs of adversely affected workers, together with legislative recommendations appropriate to meet such needs, including revisions in the unemployment insurance laws.

(E) The Secretary of the Interior and the Secretary of Commerce are directed to prepare a comprehensive report of (1) United States exports of petroleum products and other energy sources, and (2) foreign investment in production of petroleum products and other energy sources to determine the consistency or lack thereof of the Nation's trade policy and foreign investment policy with domestic energy conservation efforts. Such report shall include recommendations for legislation.

(2) Within 6 months after the date of enactment of this Act:

(A) The Administrator shall develop and submit to the Congress no later than May 15, 1974, a plan for providing incentives for the increased use of public transportation and Federal subsidies for maintained or reduced fares and additional expenses incurred because of increased service for the duration of the Act. For the purposes of Section ——, the plan provided for in this section shall be considered an energy conservation plan.

(B) The Administrator of the FEEA shall recommend to the Congress actions to be taken regarding the problem of the siting of energy producing facilities.

(C) The Administrator of the FEEA shall conduct a study of the further development of the hydroelectric power resources of the Nation, including an assessment of present and proposed projects already authorized by Congress and the potential of other hydroelectric power resources, including tidal power and geothermal steam.

(D) The Administrator shall prepare and submit to Congress a plan for encouraging the conversion of coal to crude oil and other liquid and gaseous hydrocarbons.

(E) The Secretary of the Interior shall study methods for accelerating leases of energy resources on public lands including oil and gas leasing onshore and offshore, and geothermal energy leasing.

SEC. 302. REPORTS OF THE PRESIDENT TO CONGRESS.

The President shall report to the Congress every sixty days, beginning February 1, 1974, on the implementation and administration of this Act and the Emergency Petroleum Allocation Act of 1973, together with an assessment of the results attained thereby. Each report shall include specific information, nationally and by region and State, concerning staffing and other administrative arrangements taken to carry out programs under these Acts and may include such recom-

mendations as he deems necessary for amending or extending the authorities granted in this Act or in the Emergency Petroleum Allocation Act of 1973.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the Senate bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the House to the title of the Senate bill, insert the following: "An Act to assure, through energy conservation, end-use rationing of fuels, and other means, that the essential energy needs of the United States are met, and for other purposes."

And the House agree to the same.

HARLEY O. STAGGERS,
TORBERT H. MACDONALD,
JOHN E. MOSS,
PAUL G. ROGERS,
JAMES T. BROYHILL,
J. F. HASTINGS,
Managers on the Part of the House.

HENRY M. JACKSON,
ALAN BIBLE,
LEE METCALF,
JENNINGS RANDOLPH,
EDMUND S. MUSKIE,
HOWARD BAKER,
ADLAI STEVENSON,
TED STEVENS,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and International contingency plans; to assure the continuation of vital public services; and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendments struck out all of the Senate bill after the enacting clause and inserted a substitute text and provided a new title for the Senate bill.

The committee of conference has agreed to a substitute for both the Senate bill and the House amendment to the text of the bill. Except for clarifying, clerical, and conforming changes, the differences are noted below:

Several general comments should be made concerning the overall pattern of the legislation agreed to by the Conference Committee. The Substitute text agreed to does not contain a number of provisions which were contained in either the House or Senate bill. The Committee wishes to emphasize that it has eliminated these provisions without prejudice. In a number of cases these matters were not agreed to in deference to the jurisdictional prerogatives of other committees of the Congress who were not represented at the Conference. In other cases the Conferees eliminated provisions which in their Judgment addressed problems which did not relate to the short term emergency situation. Because of the exigencies of the situation, the Conferees have attempted to confine the scope of this legislation to those matters which were essential and leave to a time which affords more studied consideration those proposals which attempt to deal with the more long term and basic energy supply and demand problems which confront this nation.

Emergency Conservation Regulations

Faced with the emergency situation, on November 8, 1973, the President addressed the nation on the dimensions of the energy crisis. In that address, the President announced that he would request the Congress to vest in him emergency authority to impose restrictions on both the public and private consumption of energy. The legislation which the Conferees have agreed to proposes to give to the Executive a full spectrum of extraordinary powers to cope with the situation. The Conferees fully expect that the Administration, having been granted

these authorities under the Act, will use them forthwith, and take strong action to reduce demand for energy during this period of national energy shortages and to expand supply of petroleum products through the conversion of stationary electric power plants now burning oil or natural gas.

The Conferees have not, however, agreed to vest without limitation the all pervasive and ill defined authority to restrict public and private consumption of energy which had been requested by the President. Instead, the Conferees have devised a mechanism for allowing further legislative consideration and control over the exercise of these powers.

Under its terms, the Administrator of the Federal Emergency Energy Administration created by this legislation would be permitted to issue regulations restricting energy use subject to a reservation of Congressional veto power. This control is to be exercised in a manner which closely parallels statutory mechanisms which have been used in various reorganization acts of the Congress over the past thirty years. The Conferees have carefully tailored this mechanism to take into consideration the emergency circumstances which confront the nation. Thus, the Administrator would be permitted to immediately implement conservation regulations prior to March 1, 1974, in order to reduce demand in the harsh winter months of January and February without delay. Such regulations must be submitted to the Congress simultaneously with their promulgation. Thereafter, the Congress would have an opportunity to veto the regulation by simple resolution in either house. If vetoed, the regulation would not continue in effect. The Committee wishes to emphasize that any such regulation would, until vetoed, be given full force and effect. Compliance may be obtained through court injunctive process or through the imposition of civil and criminal penalties for any violation.

Conservation regulations proposed to take effect after March 1, 1974, would be delayed in their implementation until Congress is afforded an opportunity of 15 consecutive days in continuous legislative session to consider disapproval resolutions. If the Congress does not act within that 15-day period, the regulation may be implemented. Lastly, the Conferees have determined that any conservation measure which is proposed to take effect after June 30, 1974, must be submitted to the Congress in the nature of a legislative proposal for appropriate Congressional consideration. Actions of this nature are sufficiently long term in their objective so as to permit the normal legislative process to be observed.

The law passed since the first declared national emergency in 1933 commonly transferred almost unlimited power to the Executive to permit government to act effectively in times of great crisis. A recently issued report of the Special Committee on the Termination of the National Emergency, United States Senate, catalogued over 470 significant statutes which the Congress has passed since 1933 delegating to the President powers that has been "the prerogatives and responsibility of the Congress since the beginning of the Republic".

Over the course of that 40-year period, the Congress has repeatedly been presented with the problem of finding a means by which a legislative body in a democratic republic may extend extraordinary powers for use by the Executive during times of emergency without imperiling

our Constitutional balance of liberty and authority. The Conferees believe that the disapproval mechanism contained in this legislation provides the best opportunity for resolution of this problem.

The veto authority coupled with a termination date which limits the duration of the period within which these powers may be exercised provides assurance that normal legislative processes will be resumed at a time certain and that the Constitutional checks and balance system will be preserved. It is firmy believed that this form of legislative consideration and control gives full effect to the separation of powers principle so fundamental to our system of government while at the same time allowing a vesting of power in the Executive branch to permit actions to be taken expeditiously in order to respond to immediate and changing circumstances during a crisis situation.

FEDERAL ENERGY EMERGENCY ADMINISTRATION

To exercise the authority granted under this legislation, the Committee has created a temporary Federal Emergency Energy Administration to be directed by an administrator appointed by the President with the advice and consent of the Senate. In addition to its duties under this Act, the Administration is to exercise the authority provided for in the Emergency Petroleum Allocation Act of 1973 previously reported by this Committee and already enacted into law. In so doing the Committee proposes to parallel and give statutory force to the Federal Energy Office created by executive order of the President on Tuesday, December 4, 1973. It is the understanding of the conferees that the office of Administrator came into existence on the effective date of this Act and that vacancies exist in such offices from the time of their creation until they are filled. Accordingly, Article 2, Section 2, Clause 3 of the Constitution is applicable.

The creation of this new administration to deal with the emergency fuels shortages is proposed on the premise that we must focus authority in a single agency head with decisionmaking responsibility for these programs. This agency is to operate within the Executive Department subject to the supervision of the President. Several trappings of independence, however, are given to the Administrator to assure that he may act consonant with the preeminence of his mission free from certain administrative controls which have been ingrafted on agency actions in the name of administrative efficiency. Thus, the Federal Emergency Energy Administration is relieved of the necessity of obtaining prior OMB clearance for information gathering activities. Also to assure that the administration will have high visibility in government, budget requests and legislative recommendations are to be transmitted to the Congress simultaneously with their submission to the Office of Management and Budget. In so doing the Committee seeks to assure that the Congres will know without question or qualification what the Administrator determines to be his fiscal needs in carrying out his legislative assignment and what additional authority may be required to get the job done effectively and expeditiously.

In addition to the powers under the Emergency Petroleum Allocation Act of 1973 and as may be authorized under this Act, the Presi-

dent has proposed to transfer other functions of the Executive Department to a Federal Energy Administration so as to consolidate energy related activities. The Committee has not attempted and does not propose to transfer these functions in this Act. It is understood that some of these proposed transfers, such as the transfer from the Department of Interior of its Office of Oil and Gas and the Outer Continental Shelf authority, require legislative approval. An appropriate bill has been submitted to the Congress and has considered by the Government Operations Committees of the House and Senate. On December 19 the Senate passed the Administration's proposed bill to establish an FEA.

The conferees wish to emphasize that the creation of a temporary Federal Emergency Energy Administration under this Act does not remove the necessity of the Congress acting upon the legislation reported by the House and Senate Government Operations Committees. The need for statutory creation of an administrative office within the Executive Branch which consolidates energy policy related functions of government remains real and immediate. This Act provides the basic authority to initiate the establishment of such an administrative office.

Safeguards Against Unreasonable Discriminations and Unequitable Treatment

The authorities contained in this legislation and in the Emergency Petroleum Allocation Act of 1973, which it amends, call for a major intrusion into the competitive marketplace by the federal government. In allocating fuels so as to maintain essential services during times of shortage and to assure equitable distribution of supplies throughout the nation, decisions will be made which will impact on all regions of the country and all sectors of the economy. Already significant actions have been taken in some cases on questionable legal authority, which have produced dislocations and distortions in the competitive market which have impacted disproportionately on individual groups of competitors offering similar services. In part, this has been the unavoidable result of attempting to cope with a crisis situation without having first developed a decision-making structure which affords government an opportunity to appreciate the full ramifications of its direct and indirect actions. For example, there must be a realization by those in authority that the public good is not served by denying allocations of fuel for certain uses which have the appearance of being nonessential (such as recreational activities or various aspects of general aviation) if to do so would result in significant unemployment and economic recession for some regions of the country. There are, of course, many areas in this nation where recreation and tourism provide the base of the local economy. Careful attention must be given to the needs of these as well as other areas. Moreover, government must equip itself so as to be able to look beyond the immediately affected industry to discover the unforeseen ripple effects of its action on other supportive and relative industry groupings.

Access to adequate supplies of fuels is basic to the survival of virtually every commercial enterprise and, accordingly, government must act with great care to assure that its actions are equitable and do not unreasonably discriminate among users. The Committee has added a

separate section to this legislation creating a statutory standard of reasonableness to be observed in the allocation of refined petroleum products and electrical energy among users or in taking actions which result in restrictions on use of such products and electrical energy. The Committee intends the term equitable to be applied in its broadest and most general sense. As such, the term denotes the spirit of fairness, justness, and right dealing. No user or class of users should be called upon during this shortage period to carry an unreasonably disproportionate share of the burden. This is fundamental to the traditional notion of fairness and equal protection. The Committee expects the President and the Administrator of the Federal Emergency Energy Administration created under this Act to assiduously observe these requirements in the conduct of their functions.

The Committee also adopted a section which requires the preparation of an economic impact analysis of any actions it proposes to take to bring supply and demand into balance. Wherever practicable, this analysis is to be completed prior to implementation of the proposed action. If conditions do not permit full advance preparation of the economic impact analysis in acting to deal with emergency conditions, the analysis is to be prepared contemporaneously with implementations of any proposed action between date of enactment and March 1, 1974.

The committee is concerned about the very real threat of the cutoff of Canadian fuel to the United States, particularly fuel essential for business and heating purposes. A specific example of such an action is the possibility that the Canadian government may stop supplying fuel to the great Northern Paper and Georgia-Pacific plants in the State of Maine. The following amendment was offered in the conference but was subsequently withdrawn in recognition of the desirability of allowing diplomatic endeavors to be pursued:

"Whenever, as a result of action by the Canadian Resources Board, fuel exports to any manufacturing plant in the United States are interrupted, the Administrator shall make an allocation of fuel to such manufacturing plant in accordance with the provisions of the Emergency Petroleum Allocation Act. Where possible, such allocation shall be from fuel which would otherwise be exported from the United States to Canada."

The committee understands that diplomatic efforts are underway to reverse the actions contemplated by the Canadian government and expresses a strong interest in having all diplomatic avenues pursued vigorously to successfully resolve this and other similar situations.

End Use Rationing Authority

The conferees have agreed on provisions which authorize the President to develop and implement an end use rationing plan for crude oil, residual fuel oil and refined petroleum products. This authority is to be exercised under the Emergency Petroleum Allocation Act of 1973 and must be consistent with the attainment of the congressionally stated objectives of that Act. Procedural protections are provided to permit users an opportunity to present views respecting the development of the plan. It is the firm intention of the conferees that end use

rationing be implemented as a last resort measure. Accordingly it has been provided in the conference substitute that end use rationing may be implemented only upon a finding that all other practicable and authorized actions are insufficient to assure the preservation of public health, safety, and the public welfare and those other defined objectives set forth in section 4(b) of the Emergency Petroleum Allocation Act. Should the President be able to make such a finding, he is authorized to implement end use rationing without further action of the Congress.

The conferees wish to state their intent that in the development of an end use rationing plan, the President shall give special consideration to the transportation needs of our handicapped Americans. Clearly, if the employment, medical, and therapeutic services of our physically handicapped citizens are interrupted as a result of lack of transportation, a hardship for such individuals will be incalculable in its effects. Moreover, the conferees believe that actions taken under the Emergency Petroleum Allocation Act of 1973 shall, where consistent with the objectives of section 4(b) of that Act, give consideration to providing allocations of petroleum products for the timely completion of Federal construction projects and give consideration to the public welfare needs of meeting the educational or housing requirements of our citizens.

The Conferees also recognize that end-use rationing plans should give consideration to the personal transportation needs of American military personnel re-assigned to other duty stations and of those persons who are required to relocate for employment purposes.

SHORT TITLE

TABLE OF CONTENTS

Senate bill

The Senate bill provided that it could be cited as the "National Energy Emergency Act of 1973". It had no table of contents.

House amendment

The House amendment provided that it could be cited as the "Energy Emergency Act".

The House amendment also included a table of contents of the legislation.

Conference substitute

The conference substitute has the same short title as the House amendment and includes a table of contents.

TABLE I—ENERGY EMERGENCY AUTHORITIES

FINDINGS AND PURPOSES—ENERGY EMERGENCY

FINDINGS

Senate bill

Under section 101 of the Senate bill the Congress would make a determination that a shortage of crude oil, residual fuel oil, and refined petroleum products does now exist. In addition, it would make determinations with respect to the effect of those shortages; what steps should be taken with respect thereto; that primary responsibility for developing and enforcing fuel shortage contingency plans lies with the States and certain local governments, and that, during the energy emergency, the protection and fostering of competition and the prevention of anticompetitive practices and effects are vital.

House amendment

No provision.

Conference substitute

Section 101(a)(1) of the conference substitute is in most respects the same as the Senate bill.

DECLARATION OF EMERGENCY

Senate bill

Under Section 201 the Congress would declare that current and imminent fuel shortages have created a nationwide energy emergency.

House amendment

No provision.

Conference substitute

Section 101(a)(2) of the conference substitute states that on the basis of the determinations specified in paragraph (1) thereof the Congress hereby finds that current and imminent fuel shortages have created a nationwide energy emergency.

PURPOSES

Senate bill

Section 102 of the Senate bill lists the purposes of the legislation. Among the purposes listed are (1) to declare an energy emergency, (2) to direct the President to take action with regard thereto, (3) to provide a national program to conserve scarce energy resources, (4) to minimize the adverse effects of energy shortages on the economy and industrial capacity of the Nation, and (5) to direct the President and State and local governments to develop contingency plans for making specified reductions in energy consumption.

House amendment

Section 101 of the House amendment sets forth the purpose of the legislation which is to (1) call for proposals for measures which could be taken in order to conserve energy, and (2) authorize specific temporary emergency measures to be taken to assure that the Nation's essential needs for fuel will be met in a manner which to the maximum practicable extent meets certain specified objectives.

Conference substitute

Section 101(b) of the conference substitute provides that the purposes of the legislation are to call for proposals for energy emergency rationing and conservation measures and to authorize specific temporary emergency actions to be exercised, subject to congressional review and right of approval or disapproval, to assure that the essential needs of the United States for fuels will be met in a manner which to the fullest extent practicable meets specified objectives.

DEFINITIONS

Senate bill

No provision.

House amendment

Section 102 defined the terms "State", "petroleum product", United States" and "Administration" for purposes of the legislation.

"Administrator" is defined to mean the Administrator of the Federal Energy Administration which is established by section 104 of the House amendment. The term is used with that meaning throughout the House amendment segments of this joint statement unless another intent is specifically indicated.

Conference substitute

Section 102 of the conference substitute is the same as the House amendment, except that "Administrator" is defined to mean the Administrator of the Federal Energy Emergency Administration which is established by section 103 of the conference substitute. That term

will be used with that meaning throughout the conference substitute portions of this joint statement unless another intent is specifically indicated.

FEDERAL ENERGY EMERGENCY ADMINISTRATION

Senate bill

No provision.

House amendment

Section 104 would establish a Federal Energy Administration. The Administration would be headed by a Federal Energy Administrator appointed by and with the consent of the Senate who would serve until May 15, 1975. The Administrator would be responsible for the development and implementation of Mandatory Allocation Programs provided for in the Emergency Petroleum Allocation Act of 1973.

Copies of budget estimates and requests, legislative recommendations, testimony, or comments on legislation which are submitted to the President or to the Office of Management and Budget would be concurrently transmitted to the Congress. The Administration would be considered an independent regulatory agency for purposes of the collection of information and as such is exempt from Office of Management and Budget veto of its actions for the collection of necessary information.

Conference substitute

Section 103 of the conference substitute establishes until May 15, 1975, unless superseded prior to that date by law a Federal Emergency Energy Administration (FEEA) which shall be temporary and headed by an Administrator who shall be appointed by the President by and with the advice and consent of the Senate.

It is the understanding of the conferees that the office of Administrator comes into existence on the date of enactment of the legislation and that a vacancy exists in such office from the time of its creation until it is filled. Accordingly, Article II, Section 2, Clause 3 of the Constitution is applicable.

Effective on the date on which the Administrator first takes office (or, if later, on January 1, 1974) certain functions, powers, and duties under specified sections of the Emergency Petroleum Allocation Act of 1973 (other than functions vested by section 6 of such Act in the Federal Trade Commission, the Attorney General, or the Antitrust Division of the Department of Justice) are transferred to the Administrator. Personnel, property, records, obligations, and commitments used primarily with respect to functions transferred to the Administrator are also transferred to him.

Whenever the FEEA submits any (1) budget estimate or request, or (2) legislative recommendations or testimony or comments on legislation, to the President or the Office of Management and Budget it must concurrently transmit a copy thereof to the Congress. No officer or agency of the United States may require the FEEA to submit its legislative recommendations or testimony or comments to any officer or agency of the United States for approval, comments, or review prior to the submission thereof to the Congress.

The FEEA shall be an independent regulatory agency for purposes of Chapter 35 of Title 44, United States Code, but not for any other purpose.

ENERGY CONSERVATION, DISTRIBUTION, AND ALLOCATION PROVISIONS—RATIONING AUTHORITY

Senate bill

Energy Rationing and Conservation Program

Under subsections (a) and (b) of section 203, the President would be required to promulgate a nationwide emergency energy rationing and conservation program within 15 days after enactment of the legislation. Such program would include (1) a priority system and plan, including a program to be implemented without delay for rationing scarce fuels among distributors and consumers, and (2) measures capable of reducing energy consumption in the affected area by no less than 10% within 10 days, and by no less than 25% within 4 weeks after implementation.

Fuel Distribution Plan

Section 203(c) would require the President within 15 days after enactment of the legislation to determine the fuel needs of the major geographic regions of the United States and to promulgate a plan assuring equitable distribution of available fuel supplies among such regions based on their respective relative needs, including such needs of the States within such regions.

The plan would include allocation of available transport facilities necessary to assure equitable distribution of fuel supplies under the plan.

The fuel distribution plan or plans would be implemented within 30 days after promulgation.

House amendment

Energy Conservation Plans

Section 105 would require the Administrator, within 30 days after enactment of the legislation and from time to time thereafter, to propose one or more energy conservation plans, as defined, to reduce energy consumption to a level which could be supplied from available energy resources. The plans would be submitted to Congress for appropriate action.

Section 105(b) would require such plans to provide for the maintenance of vital services. Section 105(c) would require that proposed restrictions on the use of energy in such plans to be submitted by the Administrator would be designed, to the maximum extent practicable, to be carried out in a manner which is fair and reasonably distributes the burden on all sectors of the economy. Such restriction should also give due consideration to the needs of commercial, retail, and service establishments with unconventional working hours. Section 105(e) would state that no provision of the Act or the EPAA should be construed as authorizing the imposition of any tax.

Amendment to Emergency Petroleum Allocation Act of 1973 (EPAA)

Section 103(a) would amend section 4 of the EPAA, relating to mandatory allocation of crude oil, residual fuel oil, and refined petroleum products.

Proposed subsection 4(h) would authorize the President to establish rules for the ordering of priorities among users of petroleum products and to assign to such users rights to obtain petroleum products in preference to those assigned a lower priority. Prior to this ordering of priorities and assignment of rights, the President must find that such action is necessary in order to carry out the objectives of subsection 4(b) of the EPAA. (Subsection 4(b) is the section which defines the provisions which must be fulfilled by the regulation providing for the mandatory allocation of petroleum products.)

In the ordering of priorities among users, the maintenance of vital services would be emphasized.

Allocations of products made pursuant to the proposed subsection would be adjusted by the President as necessary to assure that those entitled to receive allotments would actually obtain such allocated products.

The President would be required to establish procedures whereby users may petition for review, reclassification, and modification of priorities and entitlements assigned in accordance with the subsection. These procedures may include procedures with respect to local boards which could be established under section 109(c) of the legislation.

The President would be authorized to require refineries in the United States to adjust their operations with regard to the proportions of products produced in the refining process. These adjustments would be required as necessary to assure that the proportions produced are consistent with the objectives set forth in section 4(b) of the EPAA.

The definition of "allocation" as used in this subsection would be clarified by stating that it "shall not be construed to exclude the end-use allocation of gasoline to individual consumers". Thus, the President would be authorized to ration gasoline.

Section 103(e) would amend section 4 of the EPAA by adding subsections (l) through (n) thereto providing a procedure for Congressional review and disapproval of any rule issued under section 4(h) (which is discussed above) with respect to end-use allocation which is referred to as an "energy action".

Under the procedure, the President would be required to transmit any energy action to both Houses of the Congress on the same day.

An energy action would take effect at the end of the first period of 15 calendar days of continuous session of the Congress after the date on which the energy action is transmitted, unless either House passed a resolution stating that it did not favor the energy action. A detailed disapproval procedure is set out which would be enacted as an exercise of the rulemaking power of each House of Congress. Any energy action which became effective would be printed in the Federal Register.

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Proposed section 4(j) of the EPAA would provide that, notwithstanding any other provision of the EPAA, or of any State or local law regarding fuel allocation, provision will be made for adequate supplies of fuels for:

(a) moves of armed services personnel on orders;

(b) household moves related to employment;

(c) household moves rising from displacement due to unemployment; and

(d) moves due to health, educational opportunities, or other good and sufficient reasons.

Conference substitute

End-Use Allocation

Section 104 of the conference substitute amends section 4 of the Emergency Petroleum Allocation Act of 1973 (EPAA) by adding a new subsection (h).

Under the new subsection the President may promulgate a rule which shall provide, consistent with the objectives of section 4(b) of that Act, an ordering of priorities among users of crude oil, residual fuel oil, or any refined petroleum product, and for the assignment to such users of rights entitling them to obtain any such oil or product in precedence to other users not similarly entitled.

Such rule shall take effect only if the President finds that, without such rule, all other practicable and authorized methods to limit energy demand will not achieve the objectives of Emergency Petroleum Allocation Act of 1973, and of this Act.

The President shall, by order, in furtherance of such rule cause such adjustments in the allocations made pursuant to the regulation under section 4(b) of the EPAA as may be necessary to provide for the allocation of crude oil, residual fuel oil, or any refined petroleum product as necessary to attain the objectives established for the Allocation Program in the Emergency Petroleum Allocation Act.

The President must provide for procedures by which any user of such oil or product for which priorities and entitlements are established under this new subsection may petition for review and reclassification or modification of any determination made thereunder with respect to his priority or entitlement. Provision is made for the establishment of local boards to administer allocation or rationing programs. In providing for the implementation of rationing the conferees specifically state that no taxing authority, of any type, is granted.

Energy Conservation Regulations

Under section 105 of the conference substitute, the Administrator may propose one or more energy conservation regulations which shall be designed (together with certain other actions) to result in a reduction of energy consumption to a level which can be supplied by available energy resources. The term "energy conservation regulations" is defined to mean limits) or such other restrictions on the public or private use of energy (including limitations on operating hours of businesses) which are necessary to reduce energy consumption.

An energy conservation regulation—

(1) may not impose any tax or user fee, or provide for a credit or deduction in computing any tax,

(2) may not provide for taking any action of a kind which may not be taken under this legislation, the Emergency Petroleum Allocation Act of 1973, or the Clean Air Act,

(3) shall apply according to its terms in each State except as otherwise provided in the regulation, and

(4) may not deal with more than one logically consistent subject matter.

An energy conservation regulation may be amended or repealed only in accordance with section 105(b), except that technical or clerical amendments may be made in accordance with section 553 of title 5, United States Code.

Subject to provisions relating to Congressional approval or disapproval, a provision of an energy conservation regulation shall remain in effect for a period specified in the plan but may not remain in effect after May 15, 1975.

The term "energy action" is defined to mean an energy conservation regulation or an amendment (other than a technical or clerical amendment) or repeal of such an energy conservation regulation.

The Administrator must transmit any energy action (bearing an identification number) to each House of Congress on the date on which it is promulgated.

If an energy action is transmitted to Congress before March 1, 1974, and provides for an effective date earlier than March 1, 1974, then such action shall take effect on the date provided in the action; but if either House, before the end of the first period of 15 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, passes a resolution stating in substance that that House does not favor the energy action, such action shall cease to be effective on the date of passage of such resolution.

If an energy action is transmitted to Congress and provides for an effective date on or after March 1, 1974 and before July 1, 1974, such action shall take effect in most cases at the end of the first period of 15 calendar days of continuous session of Congress after the date on which the plan is transmitted to it unless, between the date of transmittal and the end of the 15-day period, either House passes a resolution stating in substance that that House does not favor the energy action.

A plan proposed to be made effective on or after July 1, 1974, shall take effect only if approved by Congress by law.

In carrying out the provisions of this legislation, the Administrator must, to the greatest extent practicable, evaluate the potential economic impacts of proposed regulatory and other actions. This would include but not be limited to the preparation of an analysis of the effect of such actions on certain entities and other things which are enumerated.

The Administrator must also develop analyses of the economic impact of various conservation measures on States or significant sectors thereof, considering the impact on both energy for fuel and energy as feed stock for industry. Such analysis shall, wherever possible, be made explicit and to the extent practicable other Federal agencies and

agencies of State and local governments which have special knowledge and expertise relevant to the impact of proposed regulatory or other actions shall be consulted in making the analysis, and all Federal agencies shall cooperate with the Administrator in preparing such analyses.

The Administrator, together with the Secretaries of Labor and Commerce, must monitor the economic impact of any energy actions taken by the Administrator, and must provide the Congress with separate reports every thirty days on the impact of the energy shortage and such emergency actions on employment and the economy.

COAL CONVERSION AND ALLOCATION

Senate bill

Section 204(a) would authorize the President to require that any major fossil fuel burning installation (including existing electric generating plants) which has the ready capability and necessary plant equipment to burn coal or other fuels, convert to burning coal or other fuels as its primary energy source. Any installation so converted could be permitted to use such fuel for more than one year, subject to the provisions of the Clean Air Act. To the extent practicable, plant conversions would first be required where the use of coal would have the least adverse environmental impact. Such conversions would be contingent on the availability of coal and reliability of service.

The President would require that fossil fuel fired electrical powerplants now being planned be designed and constructed so as to have capability of rapid conversion to burn coal.

The President could require that certain fossil fuel fired baseload powerplants (other than combustion turbine and combined cycle units) now being planned be designed and constructed so to be capable of rapid conversion to burn coal.

House amendment

The provisions of section 106 of the House amendment are in most respects the same as in the Senate bill with the following exceptions:

(1) Under the House amendment the powers and duties are vested in the Administrator of the Federal Energy Administration rather than the President.

(2) Any installation limited to burning coal as its primary energy source under the legislation or which converted to the use of coal after beginning such conversion within 90 days before the effective date of the legislation could continue to use coal until January 1, 1980, if the Administrator of the EPA approves a plan submitted by the operator of such installation after notice to interested persons and opportunity for presentation of views. The plan would have to meet requirements spelled out in section 106 (b)(1).

(3) The Administrator of EPA or a State or local agency could, after notice to interested persons and an opportunity for presentation of views, (A) prohibit any such installation from using coal if it determines that such use is likely to materially contribute to a significant risk to public health, or (B) require any such installation to use a particular type and grade of coal if such coal is available.

(4) The Administrator would be authorized to prescribe a system for allocation of coal.

Conference substitute

Section 106 of the conference substitute provides that the Administrator shall, to the extent practicable and consistent with the objectives of this Act, by order, after balancing on a plant-by-plant basis the environmental effects of use of coal against the need to fulfill the purposes of this legislation, prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this legislation, has the capability and necessary plant equipment to burn coal. Any installation to which such an order applies is permitted to continue to use coal as provided in section 119(b) of the Clean Air Act. To the extent coal supplies are limited to less than the aggregate amount of coal supplies which may be necessary to satisfy the requirements of those installations which can be expected to use coal (including installations to which orders may apply under this subsection), the Administrator shall prohibit the use of natural gas and petroleum products for those installations where the use of coal will have the least adverse environmental impact. A prohibition on use of natural gas and petroleum products hereunder is contingent upon the availability of coal, coal transportation facilities, and the maintenance of reliability of service in a given service area.

The administrator must require that fossil-fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable of using coal as a primary energy source instead of or in addition to other fossil fuels. No fossil-fuel-fired electric powerplant is required to be so designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) if an adequate and reliable supply of coal is not available and is not expected to be available. In considering whether to impose a design or construction requirement, the Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

The Administrator is authorized by rule to prescribe a system for allocation of coal to users thereof in order to attain the objectives specified in this section.

MATERIALS ALLOCATION

Senate bill

The first paragraph of section 313 would authorize the President to allocate supplies of materials, equipment, and fuel associated with exploration, production, refining, and required transportation of energy supplies to maintain and increase the production of coal, crude oil, natural gas, and other fuels.

Under section 606 the President would be authorized to allocate residual fuel oil and refined petroleum products for the maintenance of exploration for, and production or extraction and processing of, minerals, and for transportation related thereto.

House amendment

Section 103(b) would amend section 4(b) of the EPAA to provide for such allocation for maintenance of exploration for, and production or extraction of fuels and minerals essential to the requirements of the United States, and for required transportation related thereto.

Section 210 would allow the formulation of rules to provide the necessary fuels for all operations of any project or enterprise authorized by the Federal Government.

Conference substitute

Under section 107(a) of the conference substitute, the Administrator must within 30 days after enactment of the legislation propose and publish a contingency plan for allocation of supplies of materials and equipment necessary for exploration, production, refining, and required transportation of energy supplies and for the construction and maintenance of energy facilities. When he finds it necessary to put all or part of the plan into effect, he must transmit the plan or portion thereof to Congress and such plan or portion thereof shall take effect in the same manner as an energy conservation plan prescribed under section 105.

Section 107(b) of the conference substitute is the same as section 103(b) of the House amendment which is described above.

FEDERAL ACTIONS TO INCREASE AVAILABLE DOMESTIC PETROLEUM SUPPLIES

Senate bill

Section 207 would authorize the President—

(a) to require that existing domestic oil fields produce at their maximum efficient rate (MER). MER is a level of production fixed by State agency regulation at which it is estimated that production can be sustained without detriment to the ultimate recovery;

(b) to require certain designated oilfields, on lands in which there is a Federal interest, to produce in excess of their maximum efficient rate. Such fields would be those in which production in excess of their currently assigned maximum efficient rate would not result in excessive risk of losses of recovery;

(c) to require adjustment of product mix in domestic refinery operations, in accordance with national needs and priorities; and

(d) to order acceleration of oil and gas leasing programs, both onshore and offshore, and for geothermal leasing. Such an accelerated program would be subject to the provisions of all existing laws, including the National Environmental Policy Act.

House amendment

Section 103(a) would add a new section 4(h)(4) to the EPAA which would vest the President with the same authority with respect to refineries as provided in section 207(c) of the Senate bill.

Section 103(a) would also add new section 4(i) to the EPAA. This new section would authorize the President to require the production of crude oil at the MER. He would consult with the Department of the Interior and with State governments in order to determine which producers shall be so required. The MER would be as determined by the State in which the field is located. However, after consultation

with such State or with the Department of the Interior, the President may set a higher rate if he determines that in doing so the ultimate recovery of crude oil and natural gas is not unreasonably impaired.

Existing and future development plans for the production of crude oil on Federal lands would include or be amended to include provisions for the secondary recovery and, insofar as possible, the tertiary recovery of crude oil before the well was abandoned.

Conference substitute

Section 108(a) of the conference substitute is substantially the same as the provisions of the Senate bill described above, except that section 108 vests the authority in the Administrator of FEEA rather than the President, and the provisions for accelerated leasing programs are not included.

Section 108(b) of the conference substitute provides that nothing in this section shall be construed to authorize the production of any Naval Petroleum Reserve now subject to chapter 641 of title 10 of the U.S.C.

OTHER AMENDMENT TO THE EMERGENCY PETROLEUM ALLOCATION ACT OF 1973

Senate bill

No provision.

House amendment

Section 103(a) of the House amendment would have added a new subsection (l) to section 4 of the Emergency Petroleum Allocation Act. Such new subsection would require that, if any allocation of residual fuel oil or refined petroleum products under section 4(a) of the EPAA is based on the amount used or supplied during a historical period, adjustments could be made reflecting regional disparities in use, or unusual factors influencing use, in the historical period. This subsection would take effect 30 days after enactment of the legislation.

Section 103(c) would amend section 4(c)(3) of the EPAA to direct the President, when requiring adjustments in allocations, to take into account lessened use of crude oil, residual fuel oil, and refined petroleum products prior to enactment as a result of unusual regional climatic variations.

Section 103(d) would amend section 4(g)(1) of the EPAA to change the termination date in each case to May 15, 1975.

Conference substitute

Section 109 of the conference substitute is the same as the House amendment, except that—

(1) the new subsection which would be added to section 4 of the EPAA would be designated as subsection (i),

(2) population growth and unusual changes in climatic conditions are added as factors on which adjustments under the subsection can be based, and such adjustments to reflect population growth will be based on the most current figures available from the Bureau of the Census, and

(3) a specific provision has been added so that adjustments under the subsection shall take effect no later than 6 months after the date of enactment of the legislation.

(4) the amendment to section 4(c)(3) is omitted.

PROHIBITION OF WINDFALL PROFITS— PRICE GOUGING

Senate bill

No provision.

House amendment

Section 117 would amend section 4 of the Emergency Petroleum Allocation Act of 1973 by adding a new subsection to prevent price gouging with respect to sales of crude oil, residual fuel oil, refined petroleum products, and *coal*, including sales of diesel fuel to motor common carriers. The amendment would direct the President to use authority under the Act and under the Economic Stabilization Act of 1970, to specify prices for sales of crude oil, refined petroleum products, residual fuel oil, produced in or imported into the United States, which avoid windfall profits by sellers.

Any interested person who had reason to believe that established prices allowed windfall profits could petition the Renegotiation Board for a determination by rule of the existence of such profits and for their recovery. The seller would be afforded a hearing in accordance with the procedures required by section 554 of title 5, United States Code. Upon final determination that such price permitted windfall profits, the Board would order the seller to refund an equivalent amount to those affected purchasers reasonably ascertainable. The Board could order a reduction in price for future sales of such item or take other appropriate action. The Board's final determination is subject to judicial review.

The term "windfall profits" would be specifically defined in paragraphs (6) and (7). Such profits would refer only to profits earned during the period beginning with the enactment of the Act and ending on the date of its expiration. Actions to determine or recover windfall profits must be brought within one year of the Act's expiration.

Conference substitute

Section 110 of the conference substitute is the same as the House amendment, except that—

(1) The section is no longer an amendment to the Emergency Petroleum Allocation Act.

(2) A new subsection 110(a)(10) has been added which provides that no provision of this section 110 in its entirety shall take effect prior to January 1, 1975. When section 110 does take effect on January 1, 1975, it shall apply to profits attributable to prices charged after December 31, 1973 for crude, residual oil and refined petroleum products.

(3) A new and separate section 129 has been added to the conference substitute which requires the President to set prices for crude oil, residual fuel oil and refined petroleum products which avoid windfall profits. That term "windfall profits" is separately defined in that subsection to mean profits which are excessive or unreasonable, taking into consideration normal profit levels. The new section 129 shall be in effect only until December 31, 1974.

PROTECTION OF FRANCHISED DEALERS

Senate bill

Section 607 would provide for protection of franchised dealers. The term "franchise" would mean any agreement or contract between a refiner or a distributor and a retailer or between a refiner and a distributor, as these terms were defined by the section. A refiner or distributor was prohibited from terminating a franchise unless he furnished prior notification to each affected distributor or retailer in writing by certified mail not less than 90 days prior to the date on which such franchise would be canceled. Such notification must contain a statement of intention to terminate with the reasons therefor, the date on which such action would take effect, and a statement of the remedy or remedies available to such distributor or retailer. This franchise could not be terminated by the refiner or distributor unless the affected retailer or distributor failed to comply substantially with any essential and reasonable requirement of such franchise or failed to act in good faith in carrying out its terms, or unless such refiner or distributor withdrew entirely from the sale of petroleum products in commerce for sale other than resale in the United States.

A retailer with a franchise agreement could bring suit against a distributor or refiner whose actions affected commerce and who has engaged in conduct prohibited by this section. Similarly, a distributor could bring suit against a refiner. Such suits could be brought in a United States district court if commenced within three years after the cancellation, failure to renew, or termination of a franchise. The district court was empowered to grant the necessary equitable relief including declaratory judgment and injunctive relief. The court could grant an award for actual and punitive damages as well as reasonable attorney and expert witness fees.

House amendment

Section 113 amended the Emergency Petroleum Allocation Act of 1973 to provide for fair marketing of petroleum products. Certain terms were defined, including "commerce" to mean commerce between a state and a point outside such state; "marketing agreement" to mean a specified portion of an agreement or contract between a refiner and a branded independent marketer.

The notice and termination requirements would be the same as those in the Senate bill except that termination could not be made for withdrawal from the market unless the refiner did not for three years after termination engage in the sale of petroleum products in the same relevant market area within which the terminated marketer operated. Another difference required a terminated marketer to bring suit in district court against a refiner within four years after the date of termination of such marketing agreement.

Conference substitute

Section 111 of the conference substitute is the same as the Senate bill, except that—

(1) the terms "distributor", "refiner" and "retailer" are defined in terms of a *person* engaged in certain acts, rather than in terms of an *oil company* engaged in certain acts as in the Senate bill, and

(2) in the case of an action for failure to renew a franchise, damages would be limited to actual damages including the value of the dealer's equity.

PROHIBITIONS ON UNREASONABLE ACTIONS

Senate bill

No provision.

House amendment

Section 115 provides that actions taken under the legislation, the Emergency Petroleum Allocation Act of 1973, or other Federal law resulting in allocation or restriction on the use of refined petroleum products and electrical energy must be equitable and not arbitrary or capricious or unreasonably discriminate among users.

In the case of allocations of petroleum products applicable to foreign commerce no foreign entity would receive more favorable treatment than that which is accorded by its home country to U.S. citizens in the same line of commerce. Allocations would include provisions designed to foster reciprocal and nondiscriminatory treatment by foreign countries of U.S. citizens engaged in foreign commerce.

Section 105(c) would provide that, to the maximum extent practicable, restrictions on the use of energy shall be designed to be carried out in such manner so as to be fair and to create a reasonable distribution of the burden on all sectors of the economy, without imposing an unreasonably disproportionate share on any specific industry, business, or commercial enterprise, and shall give due consideration to the needs of commercial, retail, and service establishments with unconventional working hours.

Conference substitute

Section 112 of the conference substitute is the same as the House amendment except that section 112(a) refers to allocation of petroleum products and electrical energy among classes of users. Section 112(b) incorporates the provisions of section 105(c) of the House amendment, without the specification that the normal function of commercial, retail, and service establishments must be to supply goods and services of an essential nature.

REGULATED CARRIERS

Senate bill

Under section 204(b)(1), the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission with respect to certain carriers which they regulate could make reasonable and necessary adjustments in the operating authority of such carriers in order to conserve fuel.

Setion 204(b)(2) would require each of these agencies to report to the appropriate Committees of Congress within 15 days after enactment of the legislation on the need for additional regulatory authority to conserve fuel.

House amendment

Sections 107(a) and 107(d) of the House amendment are substantially the same as the provisions of the Senate bill described above, except that the reports of the ICC, CAB, and FMC would not have to

be submitted until 60 days after the date of enactment of the legislation.

In addition, section 107(b) would require the ICC to eliminate restrictions on the operating authority of any motor common carrier of property which require excessive travel between points. This would be done without disrupting essential service to communities served by any such carrier.

Section 107(c) would require the ICC to adopt rules which contribute to conserving energy by eliminating discrimination against the shipment of recyclable materials in rate structures and Commission practices.

Conference substitute

Section 113 of the conference substitute is the same as the House amendment with two exceptions. The reports of the ICC, CAB, and FMC must be submitted within 45 days after enactment and section 107(c) of the House amendment is deleted.

ANTITRUST LAWS

Senate bill

Under section 314, the President would develop plans of action and could authorize voluntary agreements which are necessary to achieve the purposes of the legislation. In addition, the President could provide for the establishment of interagency committees and advisory committees.

Advisory committees would be subject to the Federal Advisory Committee Act of 1972 and would be chaired by a regular full-time Federal employee.

An appropriate representative of the Federal Government would attend each meeting of any advisory committee or interagency committee established under the legislation. The Attorney General and the Federal Trade Commission would be given advance notice of any meeting and could have an official representative attend and participate in any such meeting.

A verbatim transcript would be kept of all advisory committee meetings, and subject to existing law concerning the national security and proprietary information, would be deposited together with any agreement resulting therefrom with the Attorney General and the Federal Trade Commission. The transcript would be available for public inspection.

The Attorney General and the Federal Trade Commission would participate in the preparation of any plans of action or voluntary agreement and could propose any alternative which would avoid, to the greatest extent practicable, any anticompetitive effects while achieving the purposes of the legislation. They would also review, amend, modify, disapprove or prospectively revoke any plan of action or voluntary agreement which they determined was contrary to the purposes of section 314 or not necessary to achieve the purposes of the legislation.

If necessary to achieve the purposes of the legislation, owners, directors, officers, agents, employees, or representatives of two or more persons engaged in the business of producing, transporting, refining, marketing, or distributing crude oil or any petroleum product would

meet, confer, or communicate in accordance with the provisions of section 314 and solely to achieve the objectives of the legislation. In those instances, such persons would have a defense against any civil or criminal action brought under the antitrust laws.

The Attorney General would be granted authority to exempt certain meetings, conferences, or communications from being chaired by a regular full-time Federal employee or from the requirement that a verbatim transcript be kept, deposited with the Attorney General and Federal Trade Commission and made available for public inspection.

The President could delegate the functions of developing plans of action, authorizing voluntary agreements, and providing for the establishment of interagency committees and advisory committees.

Section 708 of the Defense Production Act of 1950 would not apply to any action taken under this legislation or the Emergency Petroleum Allocation Act of 1973. The provisions of section 314 would apply to the latter Act, notwithstanding any inconsistent provisions of section 6(c) thereof.

There would be a defense available to any civil or criminal action brought under the antitrust laws arising from any course of action, meeting, conference, communication or agreement which was held or made in compliance with the provision of this section.

The Attorney General and the Federal Trade Commission would be responsible for monitoring any plan of action, voluntary agreement, regulation, or order approved under section 314 to prevent anticompetitive practices and promote competition.

The Attorney General and the Federal Trade Commission would promulgate joint regulations concerning maintenance of documents, minutes, transcripts, and other records relating to the implementation of any plan of action, voluntary agreement, regulation, or order approved under the legislation. Persons involved in any such implementation would be required to maintain the record required by any such joint regulation and make them available for inspection by the Attorney General and the Federal Trade Commission at reasonable times on reasonable notice.

Actions taken by the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission under section 204(b)(1) would not have as their principal purpose or effect the substantial lessening of competition among the carriers affected. Actions taken under that section would be taken only after providing an opportunity for participation to the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division.

House amendment

The provisions of section 120 are similar to the provisions in the Senate bill described immediately above. However, the following differences should be noted:

The House version vests various powers and duties in the Administrator of the Federal Energy Administration. In the Senate version powers and duties were vested in the President.

The House version requires that advisory committees include representatives of the public and be open to the public.

The Administrator, subject to the approval of the Attorney General and the Federal Trade Commission would by rule promulgate standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing crude oil, residual fuel oil, or any refined petroleum product could develop and implement voluntary agreements and plans of action to carry out such agreements which the Administrator determines are necessary to accomplish the objectives of section 4(b) of the EPAA. Such standards and procedures would be promulgated under the section 553 of title 5, United States Code. Several standards and procedures are set forth and required by the legislation.

The Federal Trade Commission instead of the Attorney General could exempt types or classes of meetings, conferences, or communications from the requirement that a verbatim transcript be kept and deposited with the Attorney General and Federal Trade Commission and made available for public inspection and copying.

Any voluntary agreement or plan of action entered into under the section would have to be submitted in writing to the Attorney General and the Federal Trade Commission 20 days before being implemented and would be available for public inspection and copying.

The Attorney General and the Federal Trade Commission could each prescribe rules and regulations necessary or appropriate to carry out their responsibilities under the legislation.

The Attorney General and the Federal Trade Commission would each submit to the Congress and the President at least once every 6 months a report on the impact on completion and on small business of actions authorized by section 120.

The authority granted under section 120 and any immunity from the antitrust laws thereunder would terminate on December 31, 1974.

Retail and Service Establishments—Voluntary Energy Conservation Agreements

Section 114 of the House amendment would provide that within fifteen days of enactment of the legislation, the Administrator, in consultation with the Attorney General and the Federal Trade Commission, would promulgate standards and procedures for retail or service establishments to enter into voluntary agreements to limit operating hours, adjust retail-store delivery schedules and take such other action as the Administrator, after consultation with the Attorney General and the Federal Trade Commission, determines to be necessary and appropriate to accomplish the objectives of this Act.

Such standards and procedures would be promulgated pursuant to section 553 of title 5 of the United States Code. Among these standards and procedures would be provision for the filing of a copy of any agreement with the Attorney General and the Federal Trade Commission, which would be available for public inspection. Meetings held to develop and implement a voluntary agreement could be at-

tended by interested persons, who would be afforded opportunity to make oral and written presentations, and such meetings shall be preceded by timely notice to the Attorney General, the Federal Trade Commission and be available for public in the affected community. A summary of such meeting, along with any written presentation of interested persons, would be submitted to the Attorney General and the Federal Trade Commission and be available for public inspection. Actions in good faith which are taken by firms in conformity with this section to develop and implement a voluntary energy conservation agreements shall not be construed to be within the prohibitions of the antitrust laws of the United States, the Federal Trade Commission Act or similar State statutes.

Any voluntary agreement entered into under this section would be submitted to the Attorney General 10 days before being implemented. The Attorney General at any time on his own motion or upon request of any interested person could disapprove any voluntary agreement under section 114 and thereby withdraw prospectively any immunity from the antitrust laws.

No voluntary agreement under this section would pertain to activities relating to marketing and distribution of crude oil, residual fuel oil or refined petroleum products, which are matters dealt with under section 120. Also, this section is limited to those voluntary agreements in which all members have 75 per cent of their annual sales not for resale and recognized as retail in the particular industry, as determined by the Attorney General.

The Attorney General and the Federal Trade Commission would be required to submit to Congress and the President at least once every six months a report on the impact on competition and on small business of agreements authorized by this section.

Conference substitute

Section 114 of the conference substitute is the same as section 120 of the House amendment, except that the authority granted and any immunity from the antitrust laws thereunder would terminate on May 15, 1975.

EXPORTS

Senate bill

Subsection (c) of section 207 authorized the President to limit the export of gasoline, number 2 fuel oil, residual fuel oil, or any other petroleum product, pursuant to the Export Administration Act of 1969, to achieve the purposes of the Act.

House amendment

To the extent necessary to carry out the purposes of the Act, section 123 authorized the Administrator by rule to restrict exports of coal, petroleum products, and petrochemical feedstocks, under such terms as he deems appropriate. He must restrict exports of such commodities if the Secretary of Commerce or the Secretary of Labor certified that such exports would contribute to unemployment in the United States. The Administrator could use, but was not limited to, existing statutes such as the Export Administration Act of 1969. Rules should take into account the historical trading relations with Canada and Mexico and should not be inconsistent with section 4(b) and (d) of the Environmental Protection Agency Act.

Conference substitute

Section 115 of the conference substitute follows the provisions of the House amendment. The authority of the Administrator to set appropriate terms for the restriction of exports of coal, petroleum products, and petrochemical feedstocks and the requirement that he do so upon certification by the Secretary of Commerce or the Secretary of Labor is the same as in section 123 of the House amendment.

In addition, the Secretary of Commerce, pursuant to the Export Administration Act of 1969 may restrict the exports of coal, petroleum products, and petrochemical feedstocks, and of materials and equipment essential to the production, transport, or processing of fuels to the extent necessary to carry out the purpose of this legislation and sections 4(b) and 4(d) of the Emergency Petroleum Allocation Act of 1973. If the Administrator certifies to the Secretary of Commerce that export restrictions of such commodities are necessary to carry out the purposes of this legislation, the Secretary of Commerce shall impose such export restrictions. The requirements for rules in the House amendment are also applied to actions taken by the Secretary of Commerce under the Export Administration Act of 1969.

The Committee has confined the export control authority to petrochemical feedstocks, coal, and petroleum products which are subject to allocation under the Emergency Petroleum Allocation Act of 1973. In using the term "petrochemical feedstocks" the Committee intends to identify the basic hydrocarbon derivatives of crude oil such as propane, butane, naphtha, olefins such as ethylene and propylene, aromatics such as benzene, toulene and the xylenes, extender oil used in the manufacture of rubber, and aromatic oils used in the manufacture of carbon black.

The Committee has vested separate authority in both the Administrator and the Secretary of Commerce (in connection with the administration of the Export Administration Act. This will insure that the essential needs of American consumers will be met and that private enterprises will not be permitted to export energy in a manner not in accord with the national interest.

EMPLOYMENT IMPACT AND WORKER ASSISTANCE

Senate Bill

Section 208 would direct the President to take into consideration and minimize, to the fullest extent practicable, any adverse impact of actions taken under this Act upon employment. All government agencies would be directed to cooperate fully to minimize any such adverse impact.

Section 501 would direct the President to make grants to states to provide unemployment assistance to individuals as he deemed appropriate during the individual's unemployment. The individual must be not otherwise eligible for unemployment compensation or have exhausted his eligibility for it. There is a two-year limitation on the eligibility for such assistance and a limitation on the amount.

This section would also authorize the President to prescribe terms and conditions for the distribution of food stamps through the Sec-

retary of Agriculture pursuant to the provisions of the Food Stamp Act of 1964, as amended, for so long as he determined necessary. The Secretary of Labor would be directed to provide reemployment assistance services under other laws to any unemployed individual, including assistance to relocate in another area where employment was available.

The President would be directed, acting through the Small Business Administration, to make loans to aid in financing domestic projects required by the Administration for administration or enforcement of the Act for approved private and public applicants. The President would determine the terms and conditions of such financial assistance subject to stated exceptions.

The authorization of such appropriations as might be necessary to carry out the provisions of this section would be included. The Secretary of Labor must report to Congress on the implementation of this section no later than six months after enactment and annually thereafter. The report must include an estimate of the funds necessary in each of the succeeding three years.

House amendment

Section 122 included provisions very similar to those in the Senate bill except that the distribution of food stamps and reemployment assistance and Small Business loans would not be provided for. Also, the President was required to report to Congress within 60 days of enactment on the present and prospective impact of energy shortages upon employment, the adequacy of existing programs to deal with such impact, and recommendations for legislation needed to adequately meet the needs of adversely affected workers.

Conference substitute

Section 116 of the conference substitute is the same as the House amendment, except that the provision for authorization of appropriations is deleted.

In adopting this provision, the Conferees expressed the serious concern that a broad interpretation of this section could result in massive Federal expenditures beyond those intended by this provision. The Conferees therefore wish to make it clear that this section is intended to apply only to those persons directly unemployed as a result of the implementation of any of the authority provided for in this Act.

The authorization is limited to $500,000,000 for the remainder of fiscal year 1974. Funds for this purpose must, of course, be appropriated by the Congress.

The Committee intends that at a time when the American people are being called upon to make sacrifices and share the burden of the energy shortage the Federal government should provide a program of unemployment assistance to State government that is adequate to cover essential human needs.

USE OF CARPOOLS AND GOVERNMENT MOTOR VEHICLES

Senate Bill

Section 605 directs the Secretary of Transportation to encourage the creation and expansion of the use of carpools and to establish within

DOT an Office of Carpool Promotion and authorizes an appropriation of $25,000,000 for the conduct of programs to promote carpools. Appropriated funds would be allocated to State and local governments in fixed proportions to carry out the promotion of carpooling. The Secretary would make a report to the Congress within one year after enactment of the legislation on his activities and expenditures under section 605.

Section 603 would generally preclude the use of funds for passenger motor vehicles or to pay the salaries of drivers of such vehicles unless they are operated out of carpools.

This would not apply to vehicles for the use of the President and one each for the Chief Justice, members of the President's Cabinet, and the elected leaders of Congress, or to vehicles operated to provide regularly scheduled service on a fixed route.

House Amendment

Section 116(a)–(f) of the House amendment is generally the same as the provisions of section 605 of the Senate bill with respect to carpools, except that only $1 million is authorized to carry out the provisions of the section. Section 116(g) would define local governments and local units of government.

The President under section 116(h) would be required to take action to require all agencies of the Government, where practicable, to use economy model motor vehicles.

Section 116(h) would also specify the number of "fuel inefficient" motor vehicles which could be purchased for the Federal Government in fiscal years 1975 and 1976.

Section 116(i) would direct the President to take action to prevent with specified exceptions any officer or employee in the Executive Branch below the rank of Cabinet officer from being furnished a limousine for his individual use.

Conference Substitute

Section 117(a) through (h) of the conference substitute is the same as section 116(a) through (h) of the House amendment with two exceptions. The sum of $5 million, not $1 million, is authorized to be appropriated for the conduct of programs to promote carpools, such authorization to remain available for two years. Also, the provisions in section 116(h) of the House amendment on government motor vehicles specifying the number of "fuel inefficient" motor vehicles which could be purchased has been deleted.

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

Senate bill

Section 311(a) would waive the more time-consuming procedures of the Administrative Procedure Act, notably the requirements of adjudicatory hearings according to section 554 of title 5, United States Code, which could otherwise apply to functions exercised under the Act. However, the requirements of sections 552, 553 (as modified by section 311(b) of the Act), 555 (c) and (e), and 702 would apply to such functions.

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Section 311(b) would require that all rules, regulations, or orders promulgated pursuant to the Act be subject to the provisions of section 553 of title 5, United States Code, with the following exceptions: (1) Notice and opportunity to comment (a minimum of five days) by publication in the Federal Register of all proposed general rules, regulations or orders (this requirement could be waived upon a finding that strict compliance would cause grievous injury); (2) public notice of State rules, regulations, or orders promulgated pursuant to section 203 of the Act by widespread publication in newspapers of statewide circulation, and (3) public hearings on those rules, regulations, or orders issued by authorized agencies and determined to have substantial impact, to be held prior to implementation to the maximum extent practicable and no later than sixty days following implementation.

Section 311(c)(1) would require, in addition to the requirements of section 552 of title 5, United States Code, any agency authorized to issue rules or orders to make available to the public all internal rules and guidelines upon which they are based, modified as necessary to insure confidentiality protected under such section 552. Such agency must publish written opinions on any grant or denial of a petition requesting exemption or exception within thirty days with appropriate modifications to insure confidentiality.

Authorized agencies would also be required to make adjustments to prevent hardships and establish procedures available to any person making appropriate requests.

Section 311(d) would require the President's proposals submitted pursuant to section 301 of the Act to include findings of fact and explanation of the rationale for each provision, proposed procedures for the removal of restrictions imposed, and a schedule for implementing the provisions of section 552 of title 5, United States Code.

Section 312 contained judicial review provisions. National programs required by the Act and regulations establishing such national programs could be challenged only in the United States Court of Appeals for the District of Columbia within 30 days of the promulgation of the regulations. Programs and regulations of general, not national, applicability (to a State, or several States, or portions thereof) could be challenged only in the United States Court of Appeals for the appropriate circuit within 30 days of promulgation. Otherwise, the United States district courts would have original jurisdiction of all other litigation arising under the Act.

However, this section would not apply to actions taken under the act by the Civil Aeronautics Board, the Interstate Commerce Commission, the Federal Power Commission, or the Federal Maritime Commission. The judicial review provisions in their respective organic acts would apply for the sake of uniformity.

House amendment

Section 109(a) would provide for the streamlining of administrative procedures for actions taken pursuant to this Act and the Emergency Petroleum Allocation Act, including the formulation of energy conservation plans.

Actions taken under title I of the bill and under the allocation exchange authority in section 205 would be subject to special adminis-

trative procedure and judicial review provisions. Section 109 would provide expedited administrative procedures for Federal actions. These same procedures would also apply to State actions unless the Federal Energy Administrator specified different but comparable procedures for the State. Included among the procedures are publication and notice and an opportunity for comment on agency rules and orders. All rules and orders issued by Federal and State agencies both under title I and under the new subsections (h) and (i) of section 4 of the Emergency Petroleum Allocation Act would be required to include provisions for making adjustments in hardship cases.

Section 109(b) would provide judicial review of rules issued under these provisions in the Temporary Emergency Court of Appeals which was created under the Economic Stabilization Act. Orders issued in individual cases would be reviewed first in the United States district court and then in the Temporary Emergency Court of Appeals.

Section 109(c) would authorize the Administrator to prescribe by rule procedures for State or local boards carrying out functions under the Act or the Emergency Petroleum Allocation Act. Such procedures would apply in lieu of those in section 109(a) and would require notice to affected persons and an opportunity for presentation of views. Such boards must be of balanced composition reflecting the makeup of the community as a whole.

The bill would not alter the judicial review provisions of the Clean Air Act. These would continue to apply to actions taken by the Administrator of EPA under that Act, including the amendments made to that Act by the Energy Emergency Act.

Conference Substitute

Section 118 of the conference substitute incorporated provisions of both the Senate bill and the House amendment. The administrative procedures of section 118(a) are the same as the streamlined administrative procedures of section 109(a) of the House amendment, with the addition of section 311(c)(1) of the Senate bill as section 118(a)(5) of the conference substitute.

Section 118(b) on judicial review is the same as section 312 of the Senate bill, except that any actions taken by any State or local officer who has been delegated authority under section 122 of the conference substitute would be subject either to district court jurisdiction or to appropriate State courts.

PROHIBITED ACTS

Senate bill

No provision.

House amendment

Section 110 stated that the following acts would be prohibited under the Act: (1) to deny full fillups of diesel fuel to trucks, unless a rationing program is in effect which restricts such full fillups to trucks or if the diesel fuel is not available for sale; (2) to violate any order concerning the use of coal as a primary energy source pursuant to section 106; (3) to violate export restrictions established under section 123; (4) to violate any order of the Renegotiation Board issued pursuant to its authority under section 117.

Conference substitute

Section 119 of the conference substitute makes it unlawful for any person to violate any provision of Title I of this legislation (except provisions making amendments to the Emergency Petroleum Allocation Act and section 113) or to violate any rule, regulation (including an energy conservation plan), or order issued pursuant to such provisions.

ENFORCEMENT

Senate bill

Section 306 provided for application by the Attorney General to the appropriate United States district court to restrain violation of the Act or regulations or orders issued thereunder by issuing a temporary restraining order, preliminary or permanent injunction.

Section 307 provided for a criminal penalty of not more than $5,000 for each willful violation of any order or regulation issued pursuant to the Act and a civil penalty of not more than $2,500 for each day of each violation of any order or regulation issued pursuant to the Act. In addition, subsection (c) made it unlawful to sell or distribute in commerce any product or commodity in violation of an applicable order or regulation. Any person who knowingly and willfully, after having been subjected to a civil penalty for a prior violation of any order or regulation violated the same provision of that order or regulation would be fined not more than $50,000 or imprisoned not more than six months, or both.

House amendment

Section III provided for fines up to $5,000 for each willful criminal violation of the Act, and civil penalties up to $2,500 for each violation of any provision of a prohibited act.

The Attorney General was authorized by this section to obtain temporary restraining orders or preliminary injunctions against actual or impending violations of this Act. It also provided for the private injunction actions.

Conference substitute

Section 120 of the conference substitute is the same as the House amendment. In addition, the provisions of subsection (c) of section 307 of the Senate bill are included.

USE OF FEDERAL FACILITIES

Senate bill

Section 305 would provide for the use of surplus government equipment or facilities, whenever practicable and to facilitate the transportation and storage of fuel, by domestic public entities and private industries for the duration of the emergency. Arrangements for such use with Federal agencies or departments must be made at fair market prices and only if such facilities or equipment would be needed, otherwise unavailable, and not required by the Federal government.

House amendment

No provision.

Conference substitute

Section 121 of the conference substitute is the same as the Senate bill, except that such government equipment or facilities must also

be appropriate to the transportation and storage of fuel and can be acquired as well as used by domestic public entities and private industries. The use of federal facilities is authorized during the period beginning on the date of enactment and ending May 15, 1975.

This provision was adopted by the conferees primarily for the purpose of freeing for use tankers now being kept in "mothballs" by the Armed Services. Such tankers, largely left over from World War II could be used by private carriers for storing oil or for transporting oil in coastwise trade where the Jones Act would otherwise prohibit the use of foreign tankers. It was the express intent of the conferees that any use of such surplus Federal equipment would not put the Federal government in the transportation business. The Navy, for example, would not be required to operate any tankers used for private shipment of oil.

DELEGATION OF AUTHORITY AND EFFECT ON STATE LAWS

Senate bill

Section 304 would provide that only State laws or programs which are inconsistent with this legislation would be superceded by it.

House Amendment

Section 108 would permit the Administrator to delegate all or any of his functions under the Act or the EPAA to any officer or employee of the Federal Energy Administration. He could also delegate any of his functions relative to implementation of regulations and energy conservation plans under either of such Acts to State officers or State and local boards of balanced composition. This section would also repeal section 5(b) of the EPAA, effective on the date of transfer of functions under such Act to the Administrator.

Conference substitute

Subsection (a) of section 122 of the conference substitute is the same as the House amendment except that the Administrator may only delegate any of his functions relative to implementation of energy conservation regulations to officers of a state or locality.

Subsection (b) is the same as the Senate bill, except that a technical amendment is made reflecting the fact that the terms "regulation", "order" and "energy conservation plan" are used in the legislation rather than "program".

The administrative mechanism for the implementation of the conservation and rationing program provided for in the Act must be such as to insure equity on a nationwide basis. At the same time it is imperative that it be responsive to the varying conditions and unique problems of the several States and regions of the Nation. For that reason, the conferees drew from both the House and Senate bills in drafting sections 104 and 122 which authorizes the Administrator to delegate functions assigned to him. Such delegation may be to either State and regional officers of the Administration or to the officers of a State or locality. For the implementation of rationing programs the establishment and use of State or local boards to handle hardship appeals and perform other functions is authorized. To insure that any rationing program is as just and equitable as possible, section 122 specifically requires that State or local boards must be of balanced com-

position so as to reflect the make up of the community as a whole. This provision is intended to insure that the interests of all classes of users are both represented and protected. The Act authorizes the appropriation of funds from which the Administrator may make grants to the States for the exercise of such authority as he may delegate or for the Administrator of State or local energy conservation measures which are independent of the authority in this Act.

GRANTS TO STATES

Senate bill

Section 315 would authorize the President to make grants to any State or major metropolitan government, in accordance with but not limited to, section 302 for the purpose of assisting, developing, administering, and enforcing emergency fuel shortage contingency plans under the Act and fuel allocation programs authorized under the Emergency Petroleum Allocation Act of 1973.

House amendment

Section 112 authorized to be appropriated such sums as might be necessary for the purpose of making grants to States to which the Federal Energy Administrator has delegated authority under section 109. The Administrator would prescribe the terms and conditions for such grants.

Conference substitute

Section 123 of the conference substitute authorizes funds for the Administrator of the Federal Energy Emergency Administration to make grants to States for the purposes of implementing authority he has delegated to them, or for the administration of appropriate State or local conservation measures where exempted from Federal conservation regulations under section 105 of the Act.

In authorizing grants to States for the purpose of carrying out their responsibilities implementing this Act, it was the express intent of the conferees that, if a rationing program were implemented, additional sums would need to be appropriated for grants in aid to the States for their participation in the rationing program.

REPORTS ON NATIONAL ENERGY RESOURCES

Senate bill

No provision.

House amendment

Section 126 would require the Administrator to issue regulations requiring persons doing business in the United States who on the effective date of the legislation are engaged in exploring, developing, processing, refining, or transporting by pipeline, any petroleum product, natural gas, or coal, to provide reports to the Administrator.

Such reports would be submitted every 60 days and a report would be required to cover the period from January 1, 1970, to the date covered by the first 60-day report.

Each report would show for the period covered the person's (1) reserves of crude oil, natural gas, and coal, (2) production and desti-

nation of any petroleum product, natural gas, and coal, (3) refinery runs by-product, and (4) other data required by the Administrator.

The Administrator would publish quarterly in the *Federal Register* a summary analysis of the data provided by such reports.

These reporting requirements would not apply to retail establishments.

Where any person is reporting all or part of the required data to another Federal agency, the Administrator could exempt the person from reporting all or part of the data to him and such other Federal agency would provide the data to the Administrator.

Provisions are included to protect trade secrets and proprietary information.

Conference substitute

Section 124 of the Conference substitute is the same as the House amendment.

INTRASTATE GAS

Senate bill

Section 210 of the Senate bill would require the President, within 90 days after enactment of the legislation, to promulgate a plan for the development of hydroelectric resources. Such plan would provide for expeditious completion of projects authorized by Congress and for the planning of other projects designed to utilize available hydroelectric resources, including tidal power.

House amendment

Section 119 is the same as the Senate provision except that it would also apply to solar energy, geothermal resources, and pumped storage.

Conference substitute

Section 125 of the conference substitute provides that nothing in the legislation shall expand the authority of the Federal Power Commission with respect to non-jurisdictional natural gas.

EXPIRATION

Senate bill

Subsection (d) of section 202 would provide in part that the nationwide energy emergency and the authority granted by the Act would terminate one year after the date of enactment.

House amendment

Subsection (b) of section 125 would provide for the expiration of all authorities granted under Title I of the Act or under the Emergency Petroleum Allocation Act on May 15, 1975.

Conference substitute

Section 126 of the conference substitute follows the House amendment by providing that the authority under Title I to prescribe any rule or order or take other action shall expire on midnight, May 15, 1975. In addition, the authority under Title I to enforce any such rule or order shall likewise expire; however, such expiration shall not affect any action or pending proceedings, civil or criminal, not finally

determined on such date, nor any action or proceeding based upon any act committed prior to midnight, May 15, 1975.

AUTHORIZATION OF APPROPRIATIONS

Senate bill

Section 318 would authorize to be appropriated such funds as were necessary for purposes of the Act.

There were authorizations of appropriations for particular provisions which have been considered in the appropriate sections of this statement.

House amendment

The House amendment contained no provision for the authorization of funds to carry out all provisions of the Act but included authorizations of appropriations for particular provisions which have also been considered in the appropriate sections of this statement.

Conference substitute

Section 127 of the conference substitute authorizes an appropriation to the Federal Energy Emergency Agency to carry out its functions under this legislation and under other laws, and to make grants to states under section 123, of $75,000,000 for each of the fiscal years 1974 and 1975. In addition, for the purpose of making payments under grants to States to carry out energy conservation measures under section 123, $50,000,000 is authorized to be appropriated for fiscal year 1974 and $75,000,000 is authorized to be appropriated for fiscal year 1975. Also. for the purpose of making payments under grants to States under section 116, $500,000,000 is authorized to be appropriated for fiscal year 1974.

SEVERABILITY

Senate bill

Section 319 would provide that if any provision of the legislation or the applicability thereof is held invalid, the remainder of legislation would not be affected thereby.

House amendment

No provision.

Conference substitute

Section 128 of conference substitute follows the Senate bill and also specifies that if the application of any provision to any person or circumstance shall be held invalid, such application to other persons or circumstances shall not be affected thereby.

IMPORTATION OF LIQUIFIED NATURAL GAS

Senate bill

No provision.

House amendment

Section 118 would amend the Emergency Petroleum Allocation Act of 1973 by adding a new section 9. This new section 9 would authorize the President to permit liquified natural gas imports on a shipment-by-shipment basis until the expiration of the legislation.

Conference substitute

The Senate recedes.

PROHIBITION AGAINST FUEL ALLOCATION FOR CERTAIN SCHOOL BUSING

Senate bill

No provision.

House amendment

Section 103 would add a new section 4(k) to the Emergency Petroleum Allocation Act of 1973. Under section no refined petroleum product could be allocated under a mandatory fuel allocation regulation made under section 4(a) of that Act to be used to transport any public school student to a school farther than the public school closest to his home offering the courses for the grade level and course of study of the student which is within the school attendance district where the student resides.

This would not prevent the allocation of refined petroleum products for transportation to relieve overcrowding, to meet needs for special education, or if the transportation is within the regularly established neighborhood school attendance areas.

These provisions would not take effect until August 1, 1974.

Conference report

The House recedes.

NATIONAL ENERGY EMERGENCY ADVISORY COMMITTEE

Senate bill

Section 310 would establish a National Energy Emergency Advisory Committee to advise the President with regard to implementation of this legislation. The Chairman of the Committee would be the Director of the Office of Energy Policy.

The Committee would consist of 20 members (in addition to the chairman) appointed by the President representing specified interests.

The heads of listed Federal departments, agencies, and instrumentalities would designate a representative to serve as an observer at each meeting of the Committee and to assist the Committee in performing its functions.

House amendment

No provision.

Conference substitute

The Senate recedes.

SMALL BUSINESS AND HOMEOWNER ASSISTANCE

Senate bill

Section 209 would amend the Internal Revenue Code to allow a taxpayer to deduct an energy-conserving residential improvement expense, not to exceed $1,000, paid or incurred by him during the taxable year on his tax return for such year. These amendments apply

to taxable years ending after the date of enactment of the Act and expire on termination of the Act.

Section 308 would authorize the Federal Housing Administration and the Small Business Administration to make low interest loans to homeowners and small businesses for the purpose of installing insulation, storm windows, and more efficient heating units. Detailed requirements were set out to express the intent of Congress that small business enterprises should cooperate to the maximum extent possible to achieve the purposes of the Act and their varied needs should be considered by all levels of government in implementing emergency fuel shortage contingency programs. Any controls instituted should be equitably applied to large and small businesses and the unique problems of retailing establishments and small businesses should be considered in implementing the provisions of the Act to avoid discrimination and undue hardship.

House amendment

No provision.

Conference substitute

The Senate recedes.

Although the Senate receded from the provisions of their bill because of a jurisdictional question on the part of the House, the conferees agreed that the provisions of the Senate bill merited implementation by the appropriate agencies. The conferees urge that the Small Business Administration, and the Department of Housing and Urban Development would consider and implement regulations permitting assistance in the form of low interest loans to persons otherwise eligible for such assistance for the purposes of installing energy saving features in homes or places of business.

INTERNATIONAL AGREEMENTS

Senate bill

Section 202(b) would authorize the President to enter into agreements with foreign entities, or to take such other action as he deems necessary, with respect to trade in fossil fuels, to achieve the purposes of the legislation. Any formal agreement would be submitted to the Senate and would be operative but not final until the Senate had 15 days, at least 7 of which were legislative days, to disapprove the agreement.

Section 202(c) expresses the sense of Congress that the energy crisis is also an international problem and therefore the United States should attempt to reach an agreement with other member nations of the Organization for Economic Cooperation and Development with respect to supplies of energy available to the industrialized nations of the free world with special reference to joint or cooperative research and development of alternative sources of power.

House amendment

No provision.

Conference substitute

The Senate recedes.

Although the Senate receded on these provisions because of a jurisdictional problem on the House side, the conferees wish to make clear that the section was dropped without prejudice from the bill.

CONSULTATIONS WITH CANADA

Senate bill

Section 601 would direct the President to convene consultations with the Government of Canada at the earliest possible date to safeguard joint national interests through consultations on encouraging trade in natural gas, petroleum, and petroleum products between the two nations. The President must make an interim report to Congress on the progress of such consultations within forty-five days after enactment and a final report with legislative recommendations ninety days of enactment.

House amendment

No provision.

Conference substitute

The Senate recedes.

TITLE II.—COORDINATION WITH ENVIRONMENTAL PROTECTION REQUIREMENTS

SHORT-TERM AND LONG-TERM SUSPENSIONS

SHORT TERM

Senate bill

The Senate bill would have allowed temporary suspensions of any emission limitation requirement or compliance schedule contained in a state implementation plan, regardless of whether the origin of the suspended provision was in State, Federal, or local law. Suspensions could only be granted during the period commencing November 15, 1973, and ending August 15, 1974, and no suspension could last beyond November 1, 1974. Only currently existing stationary fuel-burning sources which had been deprived of their supplies of clean fuel by actions taken by the President under the Senate bill itself would have been eligible to receive for suspensions, and no suspension could be granted unless the Administrator of EPA found either (i) that a suspension was essential to enable clean fuels to be redistributed to another area in order to avoid or minimize violations of primary air quality standards, or (ii) that the source in question was not likely to have available a sufficient supply of clean fuels even after all practicable steps to allocate such fuels had been taken. Suspension would only last for as long as clean fuels were unavailable. Where practicable, a suspension would be conditioned on the source's agreeing to keep on hand an emergency supply of clean fuel to burn during periods of air stagnation. The Administrator could deny any suspension request if he found that an imminent and substantial endangerment to the health of persons would result from granting it.

Suspension applications would be heard under abbreviated administrative procedures, and would not be subject to judicial review under Sections 304 or 307 of the Clean Air Act.

SHORT TERM

House Amendment

The House amendment would have allowed the Administrator of EPA during the period between enactment and May 15, 1973, to suspend any fuel or emission limitation (including compliance schedules) contained in an applicable implementation plan. The only ground for granting such a suspension would be inability to comply with the suspended requirement due to unavailability of types or amounts of fuels. Interim requirements of emission control could be imposed as a condition of suspension.

No procedural requirements would apply to suspension applications under the terms of any law, and judicial review of their grant or denial would be severely restricted.

LONG TERM

Senate bill

The Senate bill provided for revisions of State implementation plans, which could be requested by either individual sources or by a State. The Administrator would be required to approve or disapprove suspension applications within 60 days if requested by a source, or within 120 days if requested by a State. For a revision requested by a source to be approved, the Administrator would have to determine, after notice and opportunity for presentation of views, (1) that the source was able to enter into a contract either for a permanent continuous emission reduction system which the Administrator determined to have been adequately demonstrated or for a long term supply of low sulfur fuel, and (2) that the revision was consistent with the implementation plan so that ambient air quality standards would still be attained. The Administrator's approval would have to be conditioned on the source actually entering into such contract. Any plan revision, whether requested by a source of a State, would have to include legally enforceable compliance schedules for the fuel burning sources affected by the revision. The schedule would establish continuous emission reduction measures to be employed by the sources, including interim steps of progress toward implementation of such measures, and would provide for alternate emission control measures that could be employed during the interim period before final compliance with the applicable emission limitations to minimize pollutant emissions. Any such revisions could defer compliance only until July 1, 1977, although a one-year extension pursuant to section 110(f) of the Act would be authorized.

LONG TERM

House amendment

The House amendment provided that the Administrator could suspend fuel or emission limitations upon his own motion or upon the application of a source of a State (1) if he found that the source could not comply because of the unavailability of types and amounts of fuels,

(2) if the suspension would not cause violations of a primary ambient air quality standard beyond the time provided for attainment of such standard in the plan, and (3) if the source were placed on a compliance schedule, with increments of progress, which would provide for the source to use methods of emission control that would assure continuing compliance with a natural ambient air quality standard as expeditiously as practicable. No such suspension could defer compliance beyond June 30, 1979. Notice and opportunity for presentation of views would be required before approval of any such suspension. The compliance schedule would have to include a date for entering into a contractual obligation for an emission reduction system which the Administrator had determined to be adequately demonstrated. A source could also construct and install such a system itself if it provided plans and specifications for installation of such a system. Sources were given the option of not providing a compliance schedule with a contract date, or plans for an emission reduction system, if the source elected (prior to May 15, 1977) not to provide one, and established to the satisfaction of the Administrator that it had binding, enforceable rights to sufficient low polluting fuels or other means of insuring long-term compliance. If such an election were made, the amendment would limit the suspension to no later than May 15, 1977. In granting suspensions, the Administrator could impose interim requirements to minimize adverse health effects before the primary ambient air quality standard was achieved and to assure maintenance of the standard where the suspension extended beyond the attainment date deadline.

The House amendment specifically provided that such interim requirements could include intermittent control measures which the Administrator determined to be reliable and enforceable and which would permit attainment and maintenance of primary ambient air quality standards during the suspension. The interim requirements would include the obligation to utilize fuels or emission reduction systems that would permit compliance with the suspended fuel or emission limitation when such fuels or systems became available. However, use of such fuel would not be required if the costs of changing the source to permit it to burn the fuel would be unreasonable.

The House amendment also provided additional provisions making the terms of such suspensions enforceable under the Clean Air Act and to require the Administrator to publish reports at 180-day intervals on the status and effect of such suspensions. Limited judicial review of any suspension was also specified.

A specific exemption of certain coal-fired steam electric generating plants from fuel or emission limitations was provided for in the House amendment. Only facilities which were to be permanently taken out of service by December 31, 1980, and which had certified such fact to the satisfaction of the Federal Power Commission would be eligible for such exemption. Interim requirements could, however, be imposed on such facilities. The suspension would be authorized whenever the Administrator determined that compliance was unreasonable in light of (1) the useful life of the facility, (2) the availability of rate increases, and (3) the risk to the public health and the environment of such exemption.

The House Amendment also contained a separate provision in section 106(b) which provided for suspension of fuel or emission limitations that would prohibit the use of coal with respect to any source which was ordered to convert to coal by the Administrator of the Federal Energy Administration pursuant to section 106(a) of the House bill or which had voluntarily begun to convert to coal prior to the effective date of the Act. The suspension would have extended to January 1, 1980, and would have been available only if the Administrator of the Environmental Protection Agency approved, after notice and opportunity for presentation of oral views, a plan submitted by the source. The plan would, in order to be approved, have to provide (1) that the power plant would use the control technology necessary to permit the source to comply with national ambient air quality standards as expeditiously as practicable; (2) that the power plant was placed on a schedule providing for the use of emission reduction systems as soon as practicable but no later than June 30, 1979, and (3) that the power plant would comply with such interim requirements as the Administrator of the Environmental Protection Agency prescribed to insure that the power plant would not contribute to a substantial risk to public health. Such plans were to be approved before May 15, 1974, or within 60 days after submittal if submitted after that date.

The Administrator of the Environmental Protection Agency was, however, authorized, after notice and opportunity for presentation of oral views, to prohibit the use of coal if he determined that the use of coal would be likely to materially contribute to a significant risk to public health, or to require the use of a particular grade of coal if it were available to the power plant.

Conference substitute

The conference substitute provides for short term suspension of stationary source fuel or emission limitations but, with one exception, does not authorize long term suspension of such limitations. The conference substitute adds a new section 119 to the Clean Air Act which will permit the Administrator of the Environmental Protection Agency to suspend until November 1, 1974, any stationary source fuel or emission limitation, either upon his own motion or upon the application of a source or a State, if the source cannot comply with such limitations because of the unavailability of fuel. The Administrator of the Environmental Protection Agency is directed to give prior notice to the Governor of the State and the chief executive of the local governmental unit where the source is located. He is also directed to give notice to the public and to allow for the expression of views on the suspension prior to granting it unless he finds that good cause exists for not providing such opportunity. Judicial review of such suspension would be restricted to certain specified grounds.

The Administrator is required to condition the granting of any suspension upon adoption of any interim requirements that he determines are reasonable and practicable. These interim requirements must include necessary reporting requirements, and a provision that the suspension would be inapplicable during any period when clean fuels were available to such source. The Administrator would be required to de-

termine when such fuels were in fact available. It is the intent of the conferees that the Administrator in making such determination take into consideration the costs associated with any changes that would be required to be made by the source to enable it to utilize such fuel. No source which has converted to coal under section 119, however, could be required under this provision to return to the use of oil.

The suspension would also be conditioned on adoption of such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to the health of persons. This would authorize not only requirements that a facility shut down during air pollution emergencies, but also (for example) a requirement that it keep a reserve supply of clean fuels on hand to be burned to avoid such emergencies.

The purpose of the short term suspension provision is to enable sources to continue operation during the immediate fuel shortage while at the same time limiting as much as possible the impact on air quality. In rejecting the provisions for long term suspensions, the conferees were of the opinion that more information and experience should be acquired before any long term postponement of emission limitations was authorized. If additional tools for dealing with energy shortages are needed by the end of 1974, the Congress can address the issue prior to that time. For this reason both the provisions in section 402 of S. 2589 and section 119(b) of section 201 of H.R. 11882 were rejected.

In recognition of the need to balance energy needs with environmental requirements and the unique problems facing any source which is converted to coal in response to the emergency, the conferees adopted a provision which provides that no fuel or emission limitation (as defined in the conference substitute) could have the effect of prohibiting any such source from burning coal. The conference version would prohibit the application of such fuel or emission limitations to sources which are either ordered to convert to coal or which began to convert to coal during the 90-day period prior to December 15, 1973. This prohibition against application of such limitation to such source could continue until as late as January 1, 1979. The prohibition would only apply if the source were placed after notice and opportunity for oral presentation of views, on a schedule approved by the Administrator of the Environmental Protection Agency. The schedule must provide a timetable for compliance with the fuel or emission limitations of the applicable plan no later than January 1, 1979, and must provide for compliance with interim requirements that will assure that the source will not materially contribute to a significant risk to public health.

The term "significant risk to public health" is used in several instances in section 119. The conferees are aware that the Environmental Protection Agency, taking its lead from the Senate Committee Report on section 303 of the Clean Air Amendments of 1970, has defined "imminent and substantial endangerment" by regulation as a significant risk to the health of persons and has specified levels for various pollutants which reflect its judgment as to where those risks occur. The conferees emphasized that the language which is used in this section is not used in the same sense as in the EPA regulations. Rather, the language of the conference substitute, as with the House-passed bill, deals with risks to health which are less severe than those specified by the Agency's "endangerment" regulations. What is intended

is that some violation of the national primary ambient air quality standards can be permitted so long as any of the public would not be exposed to significant health risks.

The timetable for compliance which must be included in the schedule will specify a means of compliance. If the source chooses to utilize low sulfur coal or coal by-products, so that the standards will be met without use of continuous emission reduction equipment the schedule must provide for compliance as expeditiously as practicable but no later than January 1, 1979. If the source elects to use fuel which will require the use of permanent emission reduction equipment, the schedule must provide that such equipment will be purchased, installed, tested, adjusted, and in operation in time to permit compliance no later than January 1, 1979. It is the intent of the conferees that when the source selects coal which will require the use of continuous emission reduction equipment, the source will have as much time as necessary to install the equipment and achieve compliance in order to permit the orderly development of technology.

In recognition of the complex factors involved in determining schedules for the various sources, the conferees intend that the Administrator have broad discretion in prescribing and approving schedules of compliance to insure that sources meet the requirements of this section without overburdening production capacity for continuous emission reduction systems or causing unacceptable disruption in energy production capacity.

In addition, the conference committee believes that sources which intend to rely on using coal that will meet applicable requirements without reliance on continuous emission reduction systems should enter into the necessary long-term supply contracts as soon as possible to assure opening new mines. It is expected that the Administrator would include, but would not be limited to, the following requirements in such schedule:

(1) the dates by which the source will solicit bids and enter into binding contractual agreements (or other equally binding commitment) for the procurement of an adequate fuel supply to permit continued long term operation of the source;

(2) where the coal obtained by the source has pollutant characteristics which will require installation of continuous emission reduction equipment to enable the source to comply with emission limitations, the dates for soliciting bids for such equipment, contracting for such equipment, and installation and start-up of such equipment by a date that will permit a reasonable time for necessary adjustments of the equipment to maximize the reliability and efficiency of the system prior to January 1, 1979; and

(3) reasonable interim measures which the source should employ to minimize the adverse impact on air quality.

In establishing dates for contracting for coal, the Administrator should determine the earliest date that is reasonable and which will permit compliance by the time specified in this section. Because the dates for obtaining fuels or system may occur at approximately the same time for more than one source which may overburden suppliers, the Administrator is specifically authorized to establish differing dates for obtaining fuels or equipment to insure availability of supplies

of such fuels or equipment. In making such decisions, it is expected that the Administrator will provide the earliest date for those sources in areas with the most serious pollution problems.

The provision relating to conversions under section 119(b) does not apply to fuel burning stationary sources which would propose to reconvert to petroleum products or natural gas. Only fuel burning stationary sources which select coal, receive EPA approval and submit a new compliance schedule which will achieve applicable emission limitations by January 1, 1979 can take advantage of section 119(b) beyond November 1, 1974. After November 1, 1974, fuel burning stationary sources which choose to reconvert to oil remain subject to compliance schedules which were applicable prior to the temporary suspension.

The conference bill does provide for two exceptions to the prohibition on enforcing fuel or emission limitations. The Administrator, or a State or local governmental unit, may, after notice and opportunity for presentation of oral views, if practicable, prohibit the use of coal if it is determined that such use will materially contribute to a significant risk to public health. The Administrator, or a State or local government unit, may also require that a source use a particular grade of coal or coal with particular pollutant characteristics if such coal is in fact available to such source.

The conference bill makes explicit that the period of inapplicability under section 119(b) of State implementation plan requirements may be extended for one year under the procedures of section 110(f) of the Clean Air Act. It is the intent of the conferees, however, that the requirement of that section be clearly satisfied before any one year suspension is granted; the conferees believe that requiring compliance by 1979 should permit adequate time for all sources to achieve compliance. The additional one year postponement to 1980 should only be necessary to accommodate strikes, natural disasters or other unanticipated occurrences that may prevent compliance by that time.

The House-passed bill would have permitted the use of so-called intermittent or alternative control strategies as a means of meeting ambient air quality standards if such strategies were determined by the Administrator to be reliable and enforceable. This permission would have applied to both existing sources not affected directly by the energy emergency and sources required to convert to coal under the emergency legislation.

The Senate bill would have permitted revision of existing implementation plans to require use of continuous emission reduction systems on any fuel-burning stationary sources affected by shortages of fuels, suspensions or conversions.

The conference agreement does not include either of the foregoing broad provisions. Instead, the conferees decided to limit the application of this provision to those sources which convert to combustion of coal as a result of the energy emergency. The conference substitute requires these converting sources to come into compliance with all plan requirements by 1979 (or 1980, if a postponement is obtained under section 110(f)) in accordance with a schedule which meets requirements of regulations of EPA. These requirements would require incremental steps toward compliance by utilization of low sulfur coal or

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coal by-products, or by continuous emission reduction systems to permit the combustion of high sulfur coal (or coal with high ash content) in compliance with such plan requirements.

The right to continue to burn coal until January 1, 1979, would extend to sources which began converting to coal use at any time between September 17 and December 15, 1973. A source should be regarded as having begun a coal conversion if it has made significant efforts to obtain an adequate supply of coal to justify conversion, such as having solicited bids for an adequate coal supply. The Administrator would have to determine whether any such efforts were made in good faith as part of a determination by the source owner or operator to convert to coal in the face of anticipated short falls in its supply of petroleum or natural gas.

The conference bill includes the House amendment provision which authorizes the Administrator of the Environmental Protection Agency to allocate continuous emission reduction systems among users where supplies are less than demand. This provision is modified in the conference substitute to include the stipulation in the Senate bill that such allocation authority shall not impair the obligation of any contract entered into prior to the enactment of this Act.

STUDY AND REPORTS

The conference bill also adopts the provisions of the House bill which required the Administrator of the Environmental Protection Agency to report to Congress on the impact of fuel shortages on the Clean Air Act programs as well as other factors, including the availability of continuous emission control equipment. The Administrator would also have to publish periodic reports on compliance with requirements imposed as part of any suspension or coal conversion, and other information on the impact of the section. The only change from the House version was to provide for reports on all continuous emission reduction systems and not limit the report to scrubbers. The conference bill also retained the House bill provisions making the violation of any requirement imposed as part of the new section 119 subject to enforcement under section 113 of the Act. Finally, the conference version adopts the House bill provision preempting any State or local government from enforcing a fuel or emission limitation against a source granted a suspension under the section because of the availability of fuel to permit the source to comply with such fuel or emission limitation. Such preemption does not apply with respect to requirements which are identical to Federal interim requirements.

The conference bill adopts a provision similar to that in the House bill, which provided a specific exemption for electric generating plants which are scheduled to be permanently taken out of service by 1980. Unlike the House bill, the conference substitute authorizes a one year postponement of applicable plan requirements for certain power plants. To be eligible, the power plant must be on a schedule to cease operations by January 1, 1980. The Federal Power Commission must also determine that the facility will in good faith carry out such plan.

To obtain the one year postponement of an emission limitation which is part of a State implementation plan, the Governor of the State must

concur in the application to the Administrator of the Environmental Protection Agency. The Administrator shall consider the risk to the public health and welfare and only grant the postponement if he determines that compliance is not reasonable in light of the projected useful life of the plant and availability of rate increases, as well as other factors. He may prescribe such interim requirements as may be reasonable. The conferees limited this suspension to one year since it is intended that this bill only address the immediate energy emergency and the conferees do not intend for any electric generating facility to be shut down in the near future because of the infeasibility of employing required emission control measures due to the age of the facility. The Congress intends to review the long term energy problems and environmental needs during the next year and will consider such relief as may be justified to alleviate the problems presented to facilities, including power plants, which are scheduled to be phased out.

FUEL EXCHANGE AUTHORITY

House amendment

Section 205 of the House amendment would have directed the Administrator in establishing any allocation program to allocate low sulfur fuels to those areas of the country designated by the Administrator of EPA as requiring such fuels to avoid or minimize adverse health effects. This provision would have taken effect after May 15, 1974 and after such an allocation program had been established.

Section 205 would have further authorized the Administrator of EPA by rulemaking after informal hearings to issue binding exchange orders to persons subject to it. Such exchange orders would have been designed to avoid or minimize the adverse effects of any allocation program on public health. They would only have been authorized if substantial emission reduction would have resulted.

By virtue of Section 106(c), the House amendment would have explicitly authorized the Administrator to establish allocation programs for coal. If such a program were established, it would have been subject to the provisions of section 205.

Section 119(c), of the Clean Air Act, added by Section 201 of the House amendment, would have allowed the Administrator of EPA to establish by rule priorities for the supply of emissions reduction system so that they could be routed to users in regions with the most severe air pollution.

Senate bill

Section 203 of the Senate bill would have required any general priority and rationing program to provide to the extent practicable for allocation of low sulfur fuels to areas of the country designated by the Administrator of EPA as needing such fuels in order to avoid or minimize adverse impacts on public health.

The Administrator of EPA would be authorized under Section 402 of the Senate bill to further allocate low sulfur fuels within any such area. He would also be authorized to allocate emission reduction system first to users in air quality control regions with the most severe air pollution (except that no such action could affect existing controls).

Conference substitute

In order to assure the Administrator of the Environmental Protection Agency an adequate supply of information on the types, amounts, price, pollution characteristics and allocation of available fuels, it is expected that he will have access to all data available to the Administrator of the Federal Agency Administration.

Such information will assist in effective and timely performance of the Administrator of EPA's function under this section as well as those provisions relating to suspensions, conversions, enforcement, and other responsibilities of EPA.

The conferees expect that both the FEA and EPA Administrators will facilitate interagency cooperation and information exchange. EPA is expected to establish a permanent liaison in the office of the FEA Administrator for the duration of the emergency and the FEA Administrator is expected to do the same at EPA. This may reduce the confusion which can otherwise be expected to result from those decisions each agency is required to make under statutory authorization.

REVISIONS OF IMPLEMENTATION PLANS

Senate bill

The Senate bill provided that the Administrator of the Environmental Protection Agency was to review by May 1, 1974, all State implementation plans to determine if shortages of fuels or emission reduction systems, or any suspensions of emission limitations provided for in the bill (including future anticipated suspensions) would result in any plan failing to achieve the national ambient air quality standards within the time provided for in section 110 of the Clean Air Act. Where the results of review indicate that a plan would be inadequate, the Administrator would be directed to order those States to submit revisions to their plans by July 1, 1974, which would achieve the standards within the time limits. Two months were provided for the Administrator to review and approve or disapprove the plan revisions, and an additional two months were provided for him to promulgate regulations if a revision were not approvable.

House amendment

The House amendment contained a similar provision.

Conference substitute

The conference substitute provides that the Administrator will only review those plans for regions in which coal conversion under section 119(b) of the Clean Air Act may result in a failure to achieve a primary ambient air quality standard on schedule. The conference substitute directs the Administrator to order necessary plan revisions within one year after such conversion that would set forth any additional reasonable and practicable measures required to achieve ambient air quality standards. The plan revision would have to consider whether, despite the coal conversions, the standards could be achieved through the use of additional reasonable and practicable measures (which may include energy conservation measures) that were not included in the original plan. In allowing up to a year for the Administrator of the Environmental Protection Agency to act, it is the intent of the conferees to permit both the Administrator and the States suf-

ficient leadtime to develop adequate information on the impact of coal conversions, both effected and anticipated, and to permit accurate assessment of the additional measures required for State implementation plans.

The conferees expect that revisions under this section will be required only after careful consideration of a number of factors to assure that existing sources which do not convert will not be subjected to new requirements where such requirements are unreasonable or impractical. In determining reasonability and practicability, the Administrator shall consider whether the source is presently subject to requirements, is on schedule and has expended or is expending funds to comply. In this event, no requirement shall be imposed under this section which will require unreasonable additional expenditures. However, where reasonable measures can be imposed, without penalizing sources which are in compliance or are in the process of complying with the law, the Administrator shall impose such requirements.

TRANSPORTATION CONTROL PLANS

Senate bill

The Senate bill contained no provision relating to transportation control plans.

House amendment

The House amendment would have directed the Administrator, upon application by the Governor concerned, to extend until June 1, 1977, the date for achieving primary air quality standards in any air quality region subject to transportation controls which mandated a 20% or greater reduction in vehicle miles travelled by June 1, 1977, or imposed any transportation controls that could not be practicably implemented by that date. The Administrator could grant further extensions until January 1, 1985. These further extensions would be conditioned both on the application of all practicable interim control measures and on the attainment of at least a 10% annual improvement in air quality.

The House amendment would also have directed the Administrator to conduct a study of the necessity of parking surcharges, review of new parking facilities, and preferential bus/carpool lanes to achieve air quality standards. The Administrator would be required to report to the appropriate committees of the Congress within six months after enactment. Until such measures had been explicitly authorized by the Congress in subsequently enacted legislation, the Administrator could not require them to be included in an implementation plan, although he could approve such measures if they were submitted by the State. Previously promulgated regulations requiring such measures would be declared null and void.

Conference substitute

The conference substitute does not contain the provisions of the House amendment allowing modifications of the date by which primary ambient air quality standards must be achieved. The conferees expect the appropriate committees of the Congress to include in their re-examination of the Clean Air Act scheduled for the next session of the Congress, consideration of the effect modifications in new motor

vehicle emission standards will have on the ability to achieve the primary standards by statutory deadlines, as well as the practicability of various transportation control strategies within the time available.

The other related provision of the House amendment has been modified to provide that only parking surcharges (rather than surcharges, management of parking supply, and bus/carpool lanes) must receive the explicit authorization of the Congress before they may legally be imposed by the Environmental Protection Agency. The conference substitute would therefore continue to permit preferential bus/carpool lanes to be implemented by the Environmental Protection Agency as set forth in current transportation control plans. In implementing requirements for bus/carpool lanes, the basic responsibility rests with State and local governments and transportation agencies, and local hearings should be considered for specific proposals.

The conferees note that the appropriate committees with jurisdiction over the Clean Air Act will be reviewing the issues involved in transportation controls in hearings during the next session. The study mandated by this bill of the necessity and impact of these specific transportation controls will be useful to the committees in their inquiry.

In addition, the conferees direct the Administrator of the Environmental Protection Agency to review all the transportation controls which have been promulgated or proposed as to their efficacy and practicability, and to provide the appropriate committees with the results of that review in connection with hearings during 1974.

The conference substitute would also empower the Administrator of the Environmental Protection Agency to suspend for one year the review of new parking facilities. In response to inquiries by the conferees, the Administrator has provided a letter stating his intention to suspend these regulations under this authority.

U.S. Environmental Protection Agency,
Office of the Administrator,
Washington, D.C., December 19, 1973.

Senator Jennings Randolph,
Chairman, Senate Committee on Public Works,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: I would like to re-affirm for the record my understanding of our conversation yesterday on the subject of the "parking management" portions of EPA transportation control plans. I hope this letter will help to clarify EPA's position and that it will be useful to you in your continuing deliberations in the Senate-House conference on the Emergency Energy Bill.

I understand that based on provisions in the House Bill the conference committee has considered provisions which would by statute postpone requirements of parking management plans for at least one year and that consideration has also been given to an alternative provision which would simply authorize EPA to grant such an extension. You have asked what action EPA would take pursuant to such a grant of authority. As I stated to you, our position if such authority were granted would be to delay for one year from enactment (i.e. until December 1974) the effective date of parking management plans pro-

mulgated by EPA which would otherwise go into effect at an earlier date.

During this year-long suspension, EPA would continue to work with the States and localities and to provide assistance to them in developing plans which will result in the necessary reductions of vehicle miles traveled by automobiles which are required to meet the ambient air standards and thereby to achieve compliance with the Clean Air Act. During this year, EPA would not impose any postponement or restraint on action by the States and localities in furtherance of parking management plans of their own, and it is our hope that we can assist the States and localities in developing long-term strategies to achieve clean air in urban centers.

We believe that parking management plans can provide an effective tool toward meeting air quality needs. Effective use of this tool, however, does depend largely on the understanding and support of State and local officials and the general public in the individual cities in question. Further review during the one year suspension contemplated by the committee would facilitate better understanding and support for such measures.

I want to thank you for the courtesy and hospitality you extended to me and my EPA colleagues yesterday.

Sincerely yours,

JOHN R. QUARLES, Jr.,
Deputy Administrator.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., December 20, 1973.

Hon. PAUL G. ROGERS,
House of Representatives,
Washington, D.C.

DEAR MR. ROGERS: I am writing pursuant to our telephone conversation this morning concerning my letter to Senator Randolph dated yesterday (with a copy to you) about the parking management plans. In that letter I indicated that if granted authority under the Emergency Energy Act EPA would delay until one year from now the effective date of parking management plans.

You have expressed concern that I referred to parking management plans only in relationship to transportation control plans, whereas the proposed legislation would apply also to review of parking facilities under our proposed indirect source regulations. As I explained to you, our position with regard to both is the same.

Very truly yours,

JOHN R. QUARLES, Jr.,
Deputy Administrator.

Although the conferees do not believe that regulations on the management of parking supply should be made subject to prior congressional approval, they did conclude that a period for refining the criteria which will be used in the review of such facilities and establishing the administrative machinery to review them should be per-

mitted before the program is placed in operation. The conference substitute provides that when the suspension authority is exercised, no parking facility on which construction is initiated before January 1, 1975, would be subject to review for its impact on air quality as a result of any Environmental Protection Agency regulations on the management of parking supply.

In adopting these aspects of the conference substitute, the conferees do not intend to question either the need for, or the authority of the Administrator of the Environmental Protection Agency to impose, transportation control plans.

AUTO EMISSIONS

Senate bill

S. 2589, as passed by the Senate, would not have affected section 202 of the Clean Air Act. The conference committee notes, however, that on December 17, 1973, the Senate passed a bill, S. 2772, which would have extended through 1976 the interim hydrocarbon, carbon monoxide, and oxides of nitrogen emission standards established by the Administrator for model year 1975 vehicles.

House amendment

The House amendment would have amended section 202 of the Clean Air Act to defer the date for achieving the statutorily required 90% reduction in hydrocarbon and carbon monoxide automobile emissions. The date would have been deferred from model year 1976 until model year 1978. The House amendment would have required the interim hydrocarbon and carbon monoxide emission standards established by the Administrator for 1975 model year automobiles to also be applied in model years 1976 and 1977. Under the House amendment, the nitrogen oxides emission standards for 1976 model year automobiles could not exceed 3.1 grams per mile; for 1977 and subsequent model year automobiles emissions of oxides of nitrogen could not exceed 2.0 grams per mile.

In addition, the Administrator of the Environmental Protection Agency would be authorized to extend the deadline for achieving the ambient air quality standards in any air quality control region for up to two years to the extent he determined that an inability to achieve the standards on schedule would result solely from the modifications of the statutorily mandated auto emission levels and the deadlines for achieving those standards.

Conference substitute

The conference substitute amends section 202 of the Clean Air Act to continue the emission standards established by the Administrator for 1975 model year automobiles during the 1976 model year. The effect of this provision is to maintain in the 1976 model year a Federal 49-State standard of 1.5 grams per mile of hydrocarbons, 15.0 grams per mile of carbon monoxide and 3.1 grams per mile of oxides of nitrogen, and a standard for California of 0.9 grams per mile of hydrocarbons, 9.0 grams per mile of carbon monoxide, and 2.0 grams per mile of oxides of nitrogen. These standards apply to automobiles produced by all manufacturers, whether or not any individual manu-

facturer had applied for or received a suspension under section 202 (b) (5) previous to the enactment of this Act.

The conference substitute provides that after January 1, 1975, an automobile manufacturer may seek a single one-year suspension of the statutory standards for hydrocarbons and carbon monoxide applicable to the 1977 model year. The Administrator would be required to establish interim emission standards for 1977 model automobiles for hydrocarbons and carbon monoxide if he grants the suspension.

In authorizing the suspension for the 1977 model year, the conferees point out that one of the considerations advanced by Judge Levanthall in remanding EPA's decision not to authorize a suspension of the 1975 standards for one year was that adverse fuel economy would deter consumer purchasing of new automobiles, resulting in greater retention of old automobiles with inefficient pollution control devices. As Judge Levanthall pointed out, this might lead to a situation whereby denial of a suspension would result in greater total actual emissions of all cars in use than would be the case if a suspension were authorized. See *International Harvester Company, et al.* v. *Ruckelshaus*, 478 F.2d 615, 633–634 (February 20, 1973). If the Administrator is asked to authorize a suspension for HC and CO for model year 1977, and if the country is experiencing an energy crisis at the time a suspension is requested, the conferees would expect the Administrator to weigh carefully whether the application of the statutory standard would result in significant increase in fuel consumption.

The conference substitute amends section 202(b)(1)(B) of the Clean Air Act to establish a maximum emission standard for oxides of nitrogen of 2.0 grams per mile applicable nationwide to 1977 model year automobiles. This defers the previous statutory standard of 0.4 grams per mile of oxides of nitrogen until the 1978 model year. No administrative suspensions would be possible from either the 1977 or 1978 standard. While the 1977 model year standard is a maximum of 2.0 grams per mile nationwide, under the conference substitute California retains the right under section 209 of the Clean Air Act to seek a waiver for a more stringent standard.

The conferees are concerned with what may be unwarranted or, at least, untimely changes in EPA's certification test procedures for new automobile emissions. It is intended that uncertainty as to requirements for compliance with such standards be minimized. Any changes in test procedures shall be kept to an absolute minimum and should occur only where such changes improve instrumentation, reduce cost of testing or improve the reliability and validity of the test results.

The conference substitute does not contain the language of the House amendment providing for extensions of implementation plan deadlines in response to the changed standards and deadlines for automobile emissions.

REPORT LANGUAGE: FUEL ECONOMY STUDY

The fuel economy study requirement was amended to provide for joint conduct of the study with the Department of Transportation. The conferees insisted on a joint study to eliminate duplication with current, ongoing fuel economy studies.

The conferees expect, of course, that any current DOT studies will be coordinated with this study to eliminate any potential duplication and minimize waste of funds.

At the same time, the conferees agree that EPA must be actively involved in any fuel economy analysis to assure consistency between the findings of the study and the statutory requirements for automobile emission reductions.

The conferees recognize that DOT has an equally important safety responsibility but does not have either established test procedures, testing facilities or the expertise on engine technology to perform an independent review.

The conferees expect this study to utilize EPA's established emission test procedures in order to avoid inconsistency in any subsequent legislative recommendation.

TITLE III—REPORTS AND STUDIES

Senate bill

Section 204(c) would direct the President to develop and implement incentives for the use of public transportation. In addition, the Federal share of expenditures for buses and rail cars from the Highway Trust Fund increased to 80 percent.

Section 210 of the Senate bill would require the President, within 90 days after enactment of the legislation, to promulgate a plan for the development of hydroelectric resources. Such plan would provide for expeditious completion of projects authorized by Congress and for the planning of other projects designed to utilize available hydroelectric resources, including tidal power.

Under section 211, within 30 days of enactment of the legislation, the Secretaries of the Interior and of Commerce would prepare and submit to Congress a comprehensive review of U.S. export policies for energy sources. The purpose of this study would be to determine any inconsistencies between national energy trade policies and domestic fuel conservation efforts.

Section 303 would direct the Secretary of the Treasury and the Director of the Cost of Living Council to provide the Congress with recommended economic incentives to encourage both individuals and industry to subscribe to the purposes of the Act. An analysis of actions needed to effect payment by producers and users of the full cost of producing incremental energy supplies would also be required.

Under the second paragraph of section 313, the President would review all rulings and regulations issued under the Economic Stabilization Act to determine if they are contributing to the shortage of materials associated with the production of energy supplies and equipment necessary to maintain and increase the production of coal, crude oil, and other fuels.

The results of this review would be submitted to the Congress within 30 days after the date of enactment of this legislation.

Section 316 would require the Department of Health, Education, and Welfare, in cooperation with the EPA, to conduct a study of the health affects of emissions of sulphur oxide to the air resulting from any conversion to burning coal pursuant to section 204(a) of the Act.

The sum of $5 million would be authorized to be appropriated for such a study.

Section 317 would require the Council of Economic Advisors, in cooperation with other agencies and departments, to submit an Emergency Energy Economic Impact Report to the Congress which must include, but was not limited to, certain assessments of the impact of the energy shortage on employment, agriculture, various industries, commerce, and public services, as well as projections of its impact on the economy. A preliminary report would be filed thirty days after enactment and a final report no later than sixty days after enactment.

Section 402 would amend the Clean Air Act, as amended, to require the Administrator of the EPA to report to the Congress by May 1, 1974, on the extent to which any applicable State or local air pollution requirement or deadline may adversely affect the implementation of the National Energy Emergency Act or of the proposed amendments to the Clean Air Act.

House amendment

The provisions of section 104(d) of the House amendment parallel Section 313 of the Senate bill are almost the same, except that the responsibility for conducting the review would be vested in the President and the Administrator of the Federal Energy Administration.

Section 105(d) would require energy conservation plans to include proposals to provide for Federally sponsored incentives for the use of public transportation and Federal subsidies to maintain or reduce existing fares and additional expenses incurred because of increased service.

Section 121 of the House amendment is the same as the provision of Section 211 in the Senate bill, except that (1) the report under the House version would also cover foreign investment in production of energy sources and be included for the purpose of determining any inconsistencies between such investment and domestic conservation efforts, and (2) the report would have to be submitted within 90 days of enactment of the legislation rather than 30 days.

Under section 127 the Administrator would be required to prepare and submit within 90 days after enactment of the legislation a plan for encouraging the conversion of coal to crude oil and other liquid and gaseous hydrocarbons.

Section 207 would require the Administrator of the Environmental Protection Agency to report to the Congress by January 31, 1975, on the implementation of sections 201–205 of this title.

(Additional language to come.)

of Health, Education, and Welfare and the Environmental Protection Agency of the health effects of sulphur oxide conversions, except that the sum authorized was $2 million.

Section 206(a) would direct the Federal Energy Administration to conduct a study on energy conservation methods and to report the results to the Congress within six months of enactment. The study must address the energy conservation potential of restrictions on export of fuels and energy-intensive products (including balance of payments and foreign relations implications); federally sponsored incentives for public transit use and Federal authority to increase public transit facilities; alternative requirements, incentives, or disincentives for increasing recycling and resource recovery to reduce demands

on energy (including a comparison of the economic and fuel impacts of such recycling and resource recovery with the transportation and use of virgin materials); the costs and benefits of electrifying high traffic rail lines; and means for incentives or disincentives to decrease industrial use of energy.

Section 206(b) would require the Secretary of Transportation, after consulting with the Federal Energy Administrator, to submit to the Congress within 90 days of enactment an "Emergency Mass Transportation Assistance Plan" to expand and improve public mass transportation systems and encourage increased ridership. This plan must include, but is not limited to recommendations for: emergency temporary grants to assist States and local public bodies in payment of operating expenses for expanded urban mass transportation service; additional emergency assistance for the purchase of buses and rolling stock and the construction of fringe parking facilities; demonstration projects to determine feasibility of fare-free and low-fare urban mass transportation system; and the feasibility of providing tax incentives for users or urban mass transportation systems.

Section 206(d) would provide that no later than December 31, 1974, the Secretary of Transportation, in consultation with the Federal Energy Administrator, must also study and report to the Congress on the development of a high-speed ground transportation system between the cities of Tijuana, Mexico and Vancouver, British Columbia, Canada.

Section 208 would direct the President, within 90 days following enactment, to recommend to the Congress actions to be taken by the Executive and the Congress regarding siting of all types of energy producing facilities.

Section 209 would amend the Clean Air Act by directing the Administrator of EPA to conduct a study of the feasibility of establishing a fuel economy improvement standard of 20% for 1980 and subsequent model year new motor vehicles. A report on the study must be submitted to the Congress within 120 days after enactment, and the Administrator must consult with designated Federal agencies in the course of the performance of the study. The Administrator would be directed to fully examine the problems associated with obtaining a 20% improvement in fuel economy. The study must include technological problems, costs, relation to safety and emission standards as well as energy impact and enforcement. The agency would be authorized to obtain information for the study under its section 307(a) powers.

Conference substitute

Title III contains a number of provisions for studies to be conducted. Recognizing the merit of these provisions, the Conferees included them in this bill although they will not necessarily contribute to the relief of the immediate energy emergency.

The Conferees provided for three categories of studies and reports to be made to Congress. The first provides for immediate recommendations on means for near term increases in energy supply or reductions

in energy consumption. The second set of studies and reports deal with longer term methods for achieving these same objectives. The third class of reports essentially reserve to the Congress an oversight function on the implementation of this Act, by requiring reports from the President to the Congress every 60 days on the implementation and administration of this Act and the Emergency Petroleum Allocation Act of 1973, and an assessment of the results attained thereby.

The conferees recognize that increased use of mass transit is essential to energy conservation both in the short term and in the longer run. For this reason, the conferees wish to call attention to the adoption of several studies dealing with the major energy conservation measures. The first is a Senate-sponsored provision to provide for plans for Federal subsidies to mass transit systems for reduced fares and operating costs. The details of this plan will be subject to Congressional approval, prior to implementation. The conferees believe that such incentives to greater use of mass transit coupled with reduced use of personal vehicles, can result in significant energy saving.

In addition, to reflect the need for improving mass transit in the longer run as well the conferees adopted a number of provisions providing for study of various mass transit systems.

In the first class of studies which are to be completed with a report submitted to Congress within 30 days after enactment of the Act, the conference substitute adopted the following studies:

From the Senate bill—

Of the rulings and regulations issued pursuant to the Economic Stabilization Act, by the Administrator of the FEEA on methods of energy conservation and production by all Federal agencies.

On specific incentives to increase energy supply and reduce consumption, by the Secretary of the Treasury and the Director of the Cost of Living Council.

On the impact of energy shortages on employment, by the Administrator of the FEEA.

From the House amendment:

A comprehensive review of United States exports and foreign investment policies by the Secretaries of the Interior and Commerce

The second group of studies adopted in the Conference substitute, to be completed with a report submitted to Congress within 6 months from the date of enactment, include the following:

From the Senate bill:

From section 204(c) of the Senate bill, a plan to be submitted to the Congress for approval, to provide federally-sponsored incentives for increased use of mass transit, by the Administrator of the Federal Energy Emergency Administration.

Of the potential for further development of hydroelectric power resources, by the Administrator of Federal Energy Emergency Administration.

From Section 207(d) of methods for accelerated leasing of energy resources on public lands, by the Secretary of the Interior.

From the House amendment:

Of energy facility siting problem, by the Administrator of the Federal Energy Emergency Administration.

On the potential for conversion of coal to synthetic oil or gas, by the Administrator of the Federal Energy Emergency Administration.

HARLEY O. STAGGERS,
TORBERT H. MACDONALD,
JOHN E. MOSS,
PAUL G. ROGERS,
JAMES T. BROYHILL,
J. F. HASTINGS,
Managers on the Part of the House.

HENRY M. JACKSON,
ALAN BIBLE,
LEE METCALF,
JENNINGS RANDOLPH,
EDMUND S. MUSKIE,
HOWARD BAKER,
ADLAI STEVENSON III,
TED STEVENS,
Managers on the Part of the Senate.

SENATE CONSIDERATION OF FIRST CONFERENCE REPORT, DECEMBER 21, 1973

ENERGY EMERGENCY ACT—CONFERENCE REPORT

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate the conference report on S. 2589, the Energy Emergency Act.

First, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I renew my request that the conference report on S. 2589, the Energy Emergency bill, be laid before the Senate and made the pending business.

The PRESIDING OFFICER. The report will be stated by title.

The second assistant legislative read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2589) to authorize and direct the President and State and local governments to develop contingency plans for reducing petroleum consumption, and assuring the continuation of vital public services in the event of emergency fuel shortages or severe dislocations in the Nation's fuel distribution system, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

Mr. JACKSON. Mr. President, this legislation, combined with the Emergency Petroleum Allocation Act of 1973, gives the executive branch full authority to deal with the most serious peacetime fuel shortages in our history.

The administration has now estimated that the shortages caused by the Arab embargo, when added to existing shortages, will result in an average shortage of 3.27 million barrels per day or 16.4 percent of unconstrained demand. Averages of course are misleading. As my colleagues from New England are well aware, the shortages in some regions will be far more serious than these figures suggest. Even if some "leakage" in the Arab embargo occurs, there is no way to avoid a substantial fuel shortage in 1974.

These shortages, Mr. President, can be managed. Skillful use of the rationing, conservation and allocation tools provided by Congress can minimize the personal hardships and the economic impact caused by fuel shortages. But action to deal with this national problem must be timely in order to be effective. It is still not too late for the admin-

istration to move decisively on a broad range of action to reduce energy demand and assure that available fuel supplies are used most effectively.

S. 2589 is based on the premise that a nationwide energy emergency now exists and includes a congressional finding to that effect. When I first introduced the bill on October 18, 1973, it was already clear that severe fuel shortages were in prospect. It was equally clear that the administration was not only unprepared but also lacked authority to deal with such shortages. Events since then have confirmed the need for new authority, particularly with respect to energy rationing and conservation programs.

While the administration did not formally submit legislative requests for such authority, it has from the outset conceded the need for new authority and has worked closely with Congress in developing energy legislation. On the Senate side, the Interior Committee held two closed hearings on this subject with Governor Love and other officials and administration representatives also participated in public markup sessions of the bill.

The legislation was approved by a conference chaired by the distinguished chairman of the House Interstate and Foreign Commerce Committee, Representative Harley Staggers of West Virginia. The country is in his debt for the wise and able leadership he has provided in guiding this bill, and the Emergency Petroleum Allocation Act, through the Congress.

As approved by the conference, the National Energy Emergency Act authorizes the President to:

First, implement fuel rationing programs without further congressional action if the President finds that other methods to limit energy demand will not achieve the objectives of the Energy Emergency and Allocation Acts. **[Sec. 104.]**

Second, implement energy conservation plans to reduce energy demand. All such plans must be submitted to Congress when promulgated. Plans to be implemented prior to March 1, 1974, shall take effect pursuant to their provisions and remain in effect unless disapproved by either House or Senate within a period of 15 legislative days after submission. Conservation plans proposed for implementation after March 1, 1974, and prior to July 1, 1974, must be submitted to Congress for a period of 15 legislative days before they take effect. Either the House or the Senate could disapprove the plans during this period. **[Sec. 105.]**

Conservation plans proposed after July 1, 1974, must be submitted in the form of legislation and would be subject to approval by an act of Congress.

Mr. President, the procedure whereby Congress has the right to disapprove conservation plans proposed by the executive branch has been much discussed in recent days and deserves special comment.

First, it is worth nothing that this concept was incorporated in **section 301** of the bill as it was reported to the Senate 5 weeks ago. It was not a last minute improvisation.

Second, the proposed right of disapproval gives the Congress an appropriate role and responsibility in the development of conservation programs which will affect the lives of every American. I am con-

vinced that Congress should share this responsibility with the executive branch. The very existence of the right of disapproval will, I believe, lead to greater consultation with Congress and the development of better, more widely accepted conservation programs.

Finally, let me emphasize that the conference agreement gives the executive branch the necessary authority to adopt stringent conservation programs as soon as the Energy Emergency Act is signed into law by the President. As the conferees have made clear, we believe that strong conservation measures are in order and that the act before the Senate today makes possible the immediate implementation of such measures without further delay.

Any conservation measures implemented pursuant to this act in the critical first week of 1974 will have the full force and effect of law until Congress exercises the right of disapproval, and injunctive powers—as well as civil and criminal penalties—are provided to assure adequate tools for enforcement.

While the necessary enforcement authority has been provided, there can be no doubt that the effectiveness of conservation and rationing programs will depend ultimately on the degree of public acceptance of such programs and the need for their implementation. Public acceptance will, in turn, depend on a steady flow of reliable information about the impact of fuel shortages, the kind of information we are only beginning to receive.

I believe the public will respond if the people are given the facts, if they are convinced that hardships will be equally shared and if their leaders show by word and deed that they are not just dictating but participating in a national energy conservation effort.

REQUIREMENT OF FAIRNESS AND EQUITY

The conferees have made clear that Congress will expect fairness and equity in rationing, conservation, and allocation programs. The act before the Senate requires that allocation of petroleum products and electrical energy be equitable and not unreasonably discriminate among classes of users. It also provides that restrictions on energy use be fair and not impose a disportionate share of the burden of such restrictions on any specific business, industry, or commercial enterprise. I am convinced that these precepts must be followed if the programs promulgated under this act and the Allocation Act are to succeed.

In accepting the House approach to create a Federal Energy Emergency Administration **[Sec. 103]**, the conferees recognized that time was too short in this session to complete action on the more detailed legislation to create a Federal Energy Administration passed by the Senate Wednesday. The language approved by the conferees simply creates an Administration, which will remain in existence until May 15, 1975 unless superseded before then, headed by an Administrator subject to Senate confirmation and authorizes appropriations in the amount of $75 million for the current fiscal year to run it. The adoption of this provision in no way precludes further congressional action on this subject, and I hope that the House will move promptly to consider the Senate's bill in January.

The conferees recognized, as did both House and Senate, that State and local governments must play a critical role in administering pro-

grams under this act and the Allocation Act and authorized appropriations of $50 million for the current fiscal year for grants to State and local governments for this purpose. **[Sec. 123.]**

ECONOMIC IMPACT STUDIES

Mr. President, it is obvious that any rationing or conservation plans implemented under this act will have a significant economic impact. I am, therefore, pleased that the conferees accepted my proposal to require careful economic analysis of proposed actions and programs wherever possible. **[Sec. 116.]** While economic impact studies were required in the original Senate bill, the conferees approved broader provisions similar to those adopted by the Senate Wednesday in the Federal Energy Administration Act.

In addition to the analysis of the impact of proposed actions, the Administrator is also required to monitor the impact of the shortages and emergency measures on the economy and on employment and report to Congress on this subject. He must also make recommendations about the need for additional employment and economic assistance.

The conferees did authorize a $500 million program for the current fiscal year for assistance to those who are unemployed because of the administration or enforcement of this act. But we recognized that broader programs of assistance may be necessary as the fuel situation worsens in 1974.

WINDFALL PROFITS

The conferees approved an important provision, which would be effective upon enactment of the act, requiring that the President exercise his authority under the Economic Stabilization Act and the Emergency Petroleum Allocation Act to specify prices for crude oil, refined petroleum products, and residual fuel oil which avoid windfall profits by sellers. **[Sec. 110.]** The vigorous exercise of this authority is essential, I believe, to protect the American consumer in a period of substantial fuel shortages.

The conferees have retained the provision of the House bill dealing with so-called windfall profits. These provisions authorize petitions by interested persons to the Renegotiation Board to determine if specific price levels are permitting windfall profits on sales of crude oil, refined petroleum products, and residual fuel oil. The Board could set lower prices to bar windfall profits in appropriate cases.

However, the conferees also agreed that the windfall profit provision would become effective January 1, 1975, and would apply to profits attributed to prices in effect after December 31, 1973. In the event that the Congress legislates on this subject during 1974, it can of course amend or supersede these provisions.

One problem directly related to the adequacy of energy supplies is the shortage of materials and equipment essential to energy production. **[Sec. 107.]** Such shortages include critical items like roof bolts for coal mines and pipe for oil wells. The conferees adopted provisions requiring the Administrator to prepare a contingency plan for the allocation of supplies of materials and equipment essential to energy production. Any such plan would, prior to its implementation, be submitted to Congress in accordance with the procedures for submitting conservation plans.

The conferees have also approved language authorizing the Administrator to restrict exports of coal, petroleum products and petrochemical feedstocks and requiring him to do so if either the Secretary of Commerce or the Secretary of Labor certifies that such exports would contribute to unemployment. The Secretary of Commerce is also authorized to restrict such exports under the Export Administration Act. **[Sec. 115.]**

CLEAN AIR ACT CHANGES

The differences between the Clean Air Act provisions of the House and Senate bills were worked out in a separate and concurrent conference composed of Senators Muskie, Randolph and Baker and Congressmen Staggers and Hastings. The product of their intensive efforts was ratified by the conferees unanimously.

The agreement with respect to automobile emission control provisions incorporates the essential ingredients of S. 2772, the legislation on this subject passed by the Senate last week. Briefly, the agreement reached was to freeze by statute automobile emission standards for hydrocarbons and carbon monoxides for 1 year at the interim 1975 Federal standards adopted by the EPA. Thus the statutory standards contained in the Clean Air Act apply to model year 1977. The overall effect of this amendment is to grant 1 additional year for compliance with statutory hydrocarbon and carbon monoxides standards beyond the latest deadline provided for in the 1970 amendments. **[Sec. 203(a).]**

Similar modifications were made in the Federal standards for nitrogen oxides. The 1975 standard was frozen for model year 1976 and a new standard established for 1977. The previous statutory standards contained in the 1970 amendments then would apply nationwide in 1978. **[Sec. 203(b).]**

Consistent with previous legislation in this area special provision is made for the unique problems in California. Although the existing 1975 California standards for hydrocarbon and carbon monoxides are maintained for model year 1976, authority also is retained allowing California to set lower standards covering later model years.

Under the conference agreement, EPA is required to submit to the Congress by May 1, 1974, a study on the necessity for and impact of parking surcharges, management of parking supply and preferential bus/carpool lane regulations as features of transportation controls required to achieve and maintain primary air quality standards. **[Sec. 202(b)(2)(A).]**

With respect to stationary sources and the conversion of coal, the EPA Administrator would be empowered to suspend, on a short-term basis, applicable clean air requirements through November 1974. Such suspensions of applicable emission limitations would be granted only where an adequate supply of environmentally acceptable fuel is not available. This provision is consistent with both House and Senate measures as passed. **[Sec. 119 CAA.]**

Authority also is provided for modification of existing State plans and implementation plans under the clean air amendments. Extensions of time schedules for compliance with applicable standards would be restricted to actions taken in connection with the energy emergency. **[Sec. 202.]**

The FEA Administrator also would be empowered to require the conversion of major energy facilities to coal from present sources of petroleum and natural gas, except where the use of coal is likely to materially contribute to significant risks to public health. **[Sec. 106.]**

Such extensions can continue until January 1, 1979. However, wherever an ordered conversion to coal in response to the energy crisis is determined by the Administrator to endanger a primary ambient air quality standard the Administrator is specifically directed to review and modify within 1 year applicable implementation plans. Such revisions of applicable plans are to include the reasonable and practicable measures necessary to minimize adverse effects on air quality. **[Sec. 202.]**

Such revisions of implementation plans also are to be undertaken on a source by source basis before November 1, 1974, and are to require compliance with applicable emission standards no later than January 1, 1979. During this period a converted plant may employ a variety of techniques in order to achieve compliance with emission limitations, including continuous emission reduction systems, low sulfur coal or low sulfur coal byproducts. Any revision of a compliance schedule must include specified increments of progress including a schedule for instituting the required coal contracts. If the means of compliance is low sulfur coal or coal byproducts, the schedule must require delivery as soon as practicable but not later than January 1, 1979. These deadlines were selected to reflect time necessary to open new mines or develop and install technology such as coal gasification. **[Sec. 119(b)(2)(B) CAA.]**

Where an orderly development of pollution control technologies is needed in order to insure compliance with a modified implementation plan, the Administrator is empowered to establish dates for the initiation of construction of such facilities or appropriate coal conversion technologies.

Mr. President, the revisions in the Clean Air Act authority, coupled with authority for allocation, rationing, and conservation programs, will enable the administration to deal efficiently with the fuel shortages of the next few months. These emergency measures will bridge this interim period and give Congress and the executive branch the opportunity to consider definitive, longer term measures in the energy field. I urge that the Senate adopt the conference report on the Energy Emergency Act.

Mr. LONG. Why is it that those of us who serve on the committees that have jurisdiction over taxes and revenue measures have not been accorded the courtesy, or at least the opportunity, to see or study or even conduct any hearing whatever on this type of proposal? Is it that those committees have fallen into such low esteem now that they are regarded as being unworthy to consider revenue measures any longer?

Mr. JACKSON. I will say to my good friend from Louisiana that this section **[Sec. 110]** dealing with pricing and windfall profits originated in the House. To my knowledge, the committee that has original jurisdiction, under the Constitution, is the Ways and Means Committee, and to my further knowledge they did nothing about it. We had before us proposals which are not taxing measures; they involve

the extended authority to the Renegotiation Board. Under the House rules, and I believe the Senate rules to a certain extent, the authority in renegotiation areas is within the jurisdiction of the Banking, Housing and Urban Affairs Committee. This was not in the Senate bill, as the Senator knows.

Mr. LONG. In view of the fact that we are being asked to vote a tax which, as I understand is supposed to be in effect December a year from now, retroactive back to January, and assuming that we wish to collect that tax, I for one see no reason why we cannot take enough time to consider it and to see whether this is a better tax than the one proposed by the President, for example, and to hold hearings. Have any hearings been held on this tax proposal?

Mr. JACKSON. Mr. President, first of all I do not want to get into semantics. However, it is not a tax. It is authority to renegotiate.

Mr. LONG. Mr. President, may I say that the——

Mr. JACKSON. The Senate conferees had in mind the problem posed by the Senator from Louisiana. The able Senator from Maine (Mr. Muskie) offered the amendment, in which we all agreed on the Senate side, that the effective date should be January 1, 1975, as it relates to the renegotiation process. This gives the House and Senate full opportunity to take action on it.

Mr. LONG. The renegotiation bill is also a revenue bill. Is it not?

Mr. JACKSON. I think the indirect effect is exactly that. I am merely pointing out that technically it is an extension of the authority to the Renegotiation Board to renegotiate profits.

I am not arguing what the result is. I am just pointing out that that is the way the House handled it. I think that my friend, the Senator from Louisiana, will agree that the House Ways and Means Committee does not take umbrage in this matter at all. Apparently they went along. I went through the Record carefully. However, the House approved the specific action taken by a fairly substantial vote as it relates to pricing and as it relates to windfall profits.

Mr. LONG. If the Ways and Means Committee does not want to do its job in the House of Representatives, does that necessarily show that the Senate Finance Committee is abrogating its responsibility in the Senate?

Mr. JACKSON. No. However, I would emphasize again that under the Constitution, of course, tax and revenue matters must originate in the House of Representatives.

I do not care whether one calls this a taxing or a revenue measure or something else. That would have to originate in the House. The Constitution does not have anything to say about it having to originate in the Ways and Means Committee.

Mr. LONG. Mr. President, as a matter of fact, the Constitution says that revenue matters must originate in the House. And that is the way this has been construed up to this point. So the House has usually the consideration of these matters, it being a revenue bill when it is introduced. That is why those of us in the Senate who would like to amend a House passed bill to make a revenue bill out of it have been constantly frustrated by the fact that the House would not consider it when we would try to send them a Senate bill that was a revenue bill.

In this case we have before us a revenue bill that originated here. The measure originated in the Senate. The House amended it with an amendment of a revenue nature. And when a measure originates in the Senate, which is now a revenue measure, in my judgment, that is clearly contrary to the Constitution which I swore to uphold when I took my oath of office five times here. Revenue matters must originate in the House. It must be a revenue measure when it was in issue. And frankly, if one looks at the reason why it is felt that revenue measures must originate in the House, particularly in the experience of State bodies as well as the Congress, it was that the people who were going to be taxed ought to be given a chance to know about it so that they do not have to watch both bodies at once, so that a person does not have to be in both Houses at the same time to avoid getting the bum's rush on a tax matter.

He merely has to watch the House and he can see it coming. If the House initiates it without giving hearings or any right to be heard, he then has an opportunity to be heard in the Senate. That is why the Founding Fathers created the Senate.

Here we see a tax measure of very substantial consequence. I am not here to debate the merits. All I say is that this is an important matter that was initiated in the conference report as far as the Senate is concerned, not in the House where tax bills ought to be originated. This was originated in the Senate. It went to the House. Then it comes back with a House amendment in the conference report where, if those who want to use the bums rush on people insist on it, they can limit Senators to just two speeches on the conference report and insist that the conference report be voted on as a priority matter with no amendments to be considered, mind you. If those who initiated this type of approach wanted to do it in this fashion, they could deny to the Senators who do not agree with them any chance to amend it so as to make it more reasonable, to take into consideration the facts of life, or anything of that sort.

Is the Senator going to tell me that the committee having jurisdiction will not even receive the courtesy of being permitted to have hearings on the matter?

Mr. JACKSON. Mr. President, I shall make this statement and I shall conclude on this point. I will repeat what I said.

First, it is not a revenue measure. It is not a tax measure. I will read specifically from the act. However, even if it were a revenue measure, I point out the the Constitution provides that revenue measures should originate in the House. It does not say which committee should handle it. Obviously the Ways and Means Committee was not in existence when the Founding Fathers put that provision in the Constitution.

Mr. LONG. Mr. President, will the Senator yield further?

Mr. JACKSON. I yield.

Mr. LONG. Mr. President, do the Senate rules support what the Senator is saying?

Mr. JACKSON. I am merely saying what the Constitution says and what it does not say.

The House follows its own rules. Obviously, if this is in violation of the House rule, the House makes that decision, and they can fol-

low their own rules. But first of all, I want to say that even if it were a revenue measure, the House originated it and that is what the Constitution requires.

Mr. LONG. If the House originated it, why does it bear an "S" number, S. 2589? What is the "S" doing on this if this is a House-originated measure?

Mr. JACKSON. This is part of the "S" bill originating in the House. That is what the Constitution requires. And it has complied with the requirement.

Mr. President, I am not trying to nitpick. However, the facts are that it is not a tax.

I read specifically from the statute: **[Sec. 110(a)(3)(B)]**

(B) Upon petition of any interested person and notwithstanding any proceeding or determination under subparagrph (A), the Board may determine whether the price charged by a particular seller of any petroleum product permitted such seller to receive windfall profits. If, on the basis of such petition, the Board has reason to believe that such price has permitted such seller to receive windfall profits, it may order such seller to take such actions (including the escrowing of funds) as it may deem appropriate to assure that sufficient funds will be available for the refund of windfall profits in the event there is a final determination by the Board under this subparagraph that such seller has received windfall profits. Prior to a final determination under this subparagraph, such seller shall be afforded a hearing in accordance with the procedures required by section 554 of title 5, United States Code. Upon a final determination of the Board that such price permitted such seller to receive windfall profits, the Board shall order such seller to refund an amount equal to such windfall profits to the persons who have purchased from such seller at prices which resulted in such windfall profits.

Mr. President, the point I want to make is that is a refund to the people who have made the purchases. There is no tax.

Mr. LONG. Have you read the whole section?

Mr. JACKSON. Let me just finish.

Mr. LONG. Have you read the rest of it? That is not the end of the subsection.

Mr. JACKSON. No, that is not the end of the subsection. I will read the rest of it: **[Sec. 110(a)(3)(B)]**

If such persons are not reasonably ascertainable, the Board shall order the sellers for the purpose of refunding such profits, to reduce the price for future sales, to create a fund against which previous purchasers of such item may file a claim under rules which shall be prescribed by the Board, or to take such other action as the Board may deem appropriate.

Mr. President, the point I want to make is that there are no proceeds here which go to the U.S. Treasury. On the contrary, it goes to the people affected.

Now let me read——

Mr. LONG. Well, now, who is going to collect the money and pay it out to the people whose identity is unknown?

Mr. JACKSON. The Renegotiation Board handles this through the escrow procedure that I have just indicated.

Mr. LONG. Now, Senator, does your committee have jurisdiction over the Renegotiation Board?

Mr. JACKSON. No, we do not have jurisdiction over the Renegotiation Board. Of course, we do not.

Mr. LONG. Will you tell us who does?

Mr. JACKSON. Frankly, I believe the Renegotiation Board, in the House, comes under Banking and Currency. In the Senate, members of the Renegotiation Board are confirmed by the Senate Finance Committee.

Mr. LONG. My impression is that if that is the committee that handles the renegotiation action, can the Senator tell me whether there would be any difference as far as the jurisdiction of the Renegotiation Act is concerned?

Mr. JACKSON. Well, Mr. President, I am not going into a long discussion here about committee jurisdiction. I am merely reciting the language from the statute, and I want to read, finally, the report language which the House submitted when the bill was before the House, dealing with this particular section. I read from page 36 of the House report: **[Sec. 110]**

SECTION 117.—RESTRICTIONS ON WINDFALL PROFITS.—This section amends the Emergency Petroleum Allocation Act by adding a new subsection (k), which provides for restrictions on windfall profits. Under its terms, interested persons who believe established prices allow windfall profits may petition the Renegotiation Board. If, after reviewing testimony and evidence, the Board finds that windfall profits are obtained, it shall establish a new sales price which prevents such profits, or provide appropriate refunds, in the case of individual firms found to receive windfall profits under established prices.

Mr. President, I think this adequately explains the situation here as it relates to both the pricing and the windfall profits section. May I further emphasize, as I did earlier, that the windfall profits section does not take effect until January 1, 1975, and it shall apply to profits attributable to any price specified under any of the authorities referred to in paragraph 1 of the subsection—for crude oil, residual crude oil, and refined petroleum products—in effect after December 30, 1973, as I indicated in my earlier statement.

I believe it is understood now that the measure is, in my judgment, not a tax or a revenue measure. Mr. President, if it is to be a tax or revenue measure, the revenue must go into the Treasury of the United States.

It is a measure, I think, to protect the public against price gouging and profiteering in a time of shortages. I do not think the American people, very candidly, are going to tolerate any kind of profiteering or any kind of price gouging in which a certain few are going to be able to take advantage of the public.

I want to be fair and equitable, and just, and see to it that there is a proper profit allowance to provide the incentives and do the things that must be done. I say to my colleagues in the Senate right here and now that unless we make some rational moves, we are going to see, in 1974, the most punitive legislation ever adopted by Congress affecting any one industry.

Mr. MUSKIE. Mr. President, Congress, in a very short time, has produced legislation that directly addresses the immediate energy crisis facing the country. The agreement reached last night in the House-Senate conference committee gives the President and his Energy Administrator, Mr. Simon, the authority to move immediately with a firm hand to put in place the programs needed to protect the country from the fuel shortages that are now appearing around the country.

Mr. Simon has indicated that he places high hopes in an energy conservation program of substantial dimensions to save scarce fuel. This legislation will give him authority to mandate such a program.

He has indicated that programs to restrict gasoline sales and make substantial reductions in lighting for business, Government and commercial operations will be the heart of this program. This legislation is a quick yet careful response to give the administration the tools necessary to carry out such a program.

The conference agreement also directs that actions taken under the authority of this bill will be fair and equitable. The legislation gives the administration the authority to stop the export of products and materials that are vital to the production of energy.

The conference report on the Energy Emergency Act contains a compromise I proposed to preserve the section of the bill controlling windfall profits of the energy companies. Many questions were raised about problems in the mechanisms used to implement such a proposal. In order to keep the idea alive, I proposed language that would allow the excess profits section, adopted by the other body, to go into effect January 1, 1975. But it would cover excess profits earned in 1974. Thus, the delay will not exempt excess energy company profits next year.

However, we felt that the question of dealing with excess profits was by its nature complicated and sensitive. At this point, we do not know how serious the problem will be, and there has been inadequate time to consider what steps might be most effective in dealing with these profits. The provisions can be considered an incentive for the appropriate committees of Congress to begin their deliberations on this issue early next year.

This serves notice that price gouging and windfall profits will not be allowed, but gives the Congress, and the appropriate tax committees in Congress, time to formulate the best possible approach. If they devise no better language, then the provision in this bill will automatically take effect.

Mr. President, the problem of excess profits is one which rightfully angers and frustrates average Americans. They see dramatic increases in oil company profits, and wonder if the sacrifice and suffering their Government ask of them is no more than a hoax designed to swell the coffers of the industry. If we demand sacrifice from our people, we must also demand a reasonable profit structure from the energy industry.

Another important energy provision will give the administration the power to order substantial conversion from the burning of oil to the burning of coal in places where such a switch is possible. This will allow scarce oil to be released for areas of critical concern—areas such as Maine and the rest of New England, where 90 percent of the heat for the winter comes from oil. For the rest of the country, that figure is substantially lower—approximately 50 percent. So this conversion will give areas of the country that are very dependent upon oil a better prospect of receiving those oil supplies.

The country needs swift and decisive action on the energy crisis. The Congress has acted rapidly in setting up the organization and policy to carry out that action. The ball is now in the court of the executive branch.

The importance of this energy legislation and the unique interrelationship between energy and virtually all other aspects of our lives made possible its use as a vehicle for a significant number of amendments not necessarily related to the energy emergency.

For some, the emergency energy legislation became a cover for immoderate attacks on environmental goals. The conference has struck down most of these. These goals have been carefully established in acts of Congress over many years. One of the areas in which the other body proposed sweeping change was the Clean Air Act. Had the House amendments survived the conference, the Clean Air Act would be rhetoric rather than substance. I am pleased to announce to my colleagues today that that is not in fact the case.

The Senate, in order to preserve the structure and the substance of the Clean Air Act, had to make one significant concession. Your conferees had to accept the application of a new standard for the emissions of oxides of nitrogen pollutants for 1977 automobiles. **[Sec. 203(b).]**

On Monday of this week I told this body that the Subcommittee on Air and Water Pollution would consider the issue of oxides of nitrogen emissions in hearings early next year. I told this body that we would weigh carefully a recommendation to the Congress by the Environmental Protection Agency Administrator, Russell Train, to raise the near-term oxides of nitrogen emission standards to 2.0 grams per mile. The House bill extended the oxides of nitrogen standard to 2.0 grams per mile for the indefinite future with no authority for the Administrator to reduce it.

The price we paid to protect important clean air provisions of the emergency energy legislation was a 1-year extension on 2.0 NO_x. I must say this will remove some pressure early next year to act precipitously on the current standard. There can be little argument now against awaiting the completion of the National Academy of Sciences' review before we take any further action on future requirements for this significant pollutant.

At the insistence of the Senate conferees, the Members eliminated the extra year's freeze for auto emission standards contained in the House bill, as well as the potential for five additional 1-year freezes at the Administrator's discretion. The House ban on the use of special bus/carpool lanes was dropped, as was the 2-year delay in transportation control plans.

The conference did agree to suspend EPA's authority to impose a parking surcharge. **[Sec. 202(b)(2)(B).]** While I recognize that a surcharge may be very useful in stimulating mass transit, substantial questions exist about EPA's authority to impose such a tax. It was not directly anticipated during passage of the Clean Air Act Amendments of 1970. I believe it appropriate that we continue to study this thoroughly through the public hearings begun earlier this year by my subcommittee.

The House ban on the use of parking management schemes has been replaced by assurance from EPA that such actions will be suspended until January 1, 1975, so that these plans might be thoroughly studied. **[Sec. 202(b)(2)(C).]**

We have eliminated provisions that would arbitrarily deny authorized tools that may be needed to reach clean air standards designed to protect the public health. We will now have the opportunity to weigh the merits of these strategies in orderly legislative hearings.

This was an important step in preserving public participation in decisions regarding key features of the Clean Air Act.

STATIONARY SOURCES

The Senate, in its version, insisted that any changes made in the regulation of stationary sources be kept related to the Emergency Energy Act. Many House provisions that dealt broadly with the Clean Air Act have been eliminated.

Provisions exempting many fuel burning stationary sources from emission limitations have been dropped.

The House legislation attempted to sanction an approach to pollution control which was not anticipated under the Clean Air Act. This is the use of intermittent control measures for cleaning up pollution. This system allows companies to withhold pollution temporarily, and then when weather conditions are favorable the smoke and soot is dumped into the air. This is not an adequate alternative to purchasing equipment or fuel or fuel byproducts that will provide for continuous and constant emission reduction and the conferees rejected it.

One of the most controversial provisions in the House legislation was an attempt to encourage a conversion of powerplants to coal without also requiring that such plants comply fully with their current Clean Air Act requirements. If left standing, this provision would have created the potential for such converted companies to consistently ignore air quality standards—standards that are based on the need to protect, at a bare minimum, the health of our population.

At the same time, the House provisions raised doubts about the right of a State to set higher emission limitations than are established under Federal standards.

Instead of these provisions, the conferees established a framework that will preserve the Clean Air Act while providing needed energy by allowing necessary short- and long-term switches to available fuels. The conference proposal permits the EPA Administrator to suspend Federal, State, and local clean air requirements through November 1, 1974. Short-term suspensions would be granted if an adequate supply of conforming fuel is not available. **[Sec. 119(a) CAA.]**

A suspension can continue until January 1, 1979, with a potential single 1-year extension provided for plants which convert to coal if the plants submit—and obtain approval of—compliance schedules to achieve Clean Air Act standards by 1979. EPA can prohibit the use of coal where it is likely to materially contribute to significant risk to public health. **[Sec. 119(b) CAA.]**

A converted plant can use continuous emission reduction systems, low-sulfur coal or low-sulfur coal byproducts to achieve such limits. A new compliance schedule must mandate steady progress, but compliance with the emission limits established for that source under existing implementation plans must be achieved not later than January 1, 1979.

Binding contracts must be entered into for coal and pollution control equipment as a part of a new compliance schedule. **[Sec. 119(b)(2)(B) CAA.]**

I am fully aware that problems may exist in some of the changes we have made in the law. But I believe those interested in these matters should also recognize that tremendous problems have also been eliminated by insistence of the Senate conferees. We now must monitor the actions that result for this law. The entire Clean Air Act will be reviewed and reauthorized next year. I believe we have now protected that orderly review.

In other respects, Mr. President, the conference agreement emerges much as the Senate had hoped and if anything perhaps narrower than some had constructed the Senate bill. Those aspects of the conference agreement which amend the Clean Air Act are restricted to actions arising out of the energy emergency. We believe we have given the Administrator of the Environmental Protection Agency the needed authority to respond to the energy emergency without giving the opponents of the environmental programs the mechanisms to gut the Clean Air Act.

Mr. President, I would like to express my appreciation to the Senator from Washington (Mr. Jackson) and my fellow conferees for their confidence in Senate Public Works Committee conferees on the issue of the Clean Air Act. At the time the Senate enacted this legislation, the Senator from Washington committed himself to support of the agreements which the Committee on Public Works conferees were able to negotiate. We were given sufficient time, to the extent that there was sufficient time at all on this legislation, to work out our differences without counterparts on the House Interstate and Foreign Commerce Committee. The conferees supported this agreement with unanimity.

I would like to say a word also about people with whom we negotiated this agreement on the House side. Congressman Paul Rogers, chairman of the House Subcommittee on Public Health and the Environment, and his ranking member, Congressman Jim Hastings of New York, recognized the need to fashion a bill providing emergency powers rather than attempting to deal with large questions surrounding the Clean Air Act. Their cooperation made possible today's agreement. I compliment them for being statesmen of the highest order. I look forward to next year, when the Clean Air Act must be reauthorized, to working with them to improve the processes which we finally approved in the Senate 3 years ago.

We knew on September 22, 1970, that the full implications of the policies we were enacting would be difficult to predict or completely understand.

We knew in 1970 that the Clean Air Act would reshape our lives in many ways, and we knew in 1970 that there would be problems resulting from the act which could not be solved in the administration or in the courts. Next year we will review those questions. We will attempt in a deliberate way to develop more and better tools to improve the quality of the environment.

Mr. President, the committee report on this bill also contains language expressing congressional concern over the very real threat of a cutoff of Canadian oil to the United States. Businesses in my home State and elsewhere along the Canadian border have entered into oil

supply contracts from Canadian suppliers. But Canada is experiencing a shortage of its own, and the Canadian Government has adopted a very strict policy toward exports to the United States. In my home State, this policy means the threatened loss of 8,000 jobs by the end of January.

I proposed an amendment in committee stating:

> Whenever, as a result of action by the Canadian Resources Board, fuel exports to any manufacturing plant in the United States are interrupted, the Administrator shall make an allocation to such manufacturing plant in accordance with the provisions of the Emergency Petroleum Allocation Act. Wherever possible, such allocation shall be from fuel which would otherwise be exported from the United States to Canada.

This amendment was withdrawn after the committee received assurances that this problem is being dealt with on a diplomatic level. The report expresses strong congressional interest in these negotiations, and encourages vigorous use of all diplomatic avenues to resolve the problem.

The first reaction of many in facing the energy crisis has been to suggest degrading the environment as a first course of action. I believe we have been successful in turning back much of that thrust in this legislation. I am not totally satisfied in all respects, but I believe we have struck a compromise that has substantially repaired the public interest.

Conservation of all scarce resources ought to be our first action. Instead, environmental degradation has been the first choice of some. Ironically, this degradation virtually never yields additional energy. I have confidence that the American people will see past any attempt to create an environmental scapegoat in the energy issue. No amount of relaxation of pollution controls will invent new oil or new natural gas. Relaxation will only dangerously delay addressing the real changes we must make to protect our health and our environment.

I have assumed all through my deliberations on this legislation that my colleagues greatly desired an emergency energy bill before the Christmas recess. Based on that assessment, I have agreed to compromises that I might have rejected in a different context. But I believe we have protected basic environmental values. On that basis, and in the belief that energy measures provided in this bill are vital to the country, I recommend that the Senate swiftly approve the bill's passage.

Mr. METCALF. Mr. President, the great Senator from Nebraska, George Norris, was a crusader for a unicameral legislature largely because he recognized that a great deal of significant legislation is written in conference without publicity and away from the observation of the Members of the respective Houses. The spirit of George Norris must be restless today as a result of the occurrences in the recent conference on the so-called energy bill S. 2589, which is the pending business.

Let me hasten to say that both Senator Jackson, who was chairman of the Senate conferees, and Congressman Staggers, who presided over the conference, were eminently fair and worked with patience and persistence in bringing out a bill that is not only a good compromise between the House and Senate positions but is a bill that will be a useful and effectiive tool in solving many of the urgent problems presented by the shortages of oil and natural gas as we go into the winter months.

However, it is with respect to an incident that happened in the course of the conference that I wish to comment. Wednesday evening the conference recessed at about 7:30 p.m. to reconvene at 8:15 p.m. When the time arrived for the conferees to continue the discussion, we were informed that Mr. Simon wanted to meet with the conferees. Mr. Simon was late, because of a TV engagement and I certainly do not fault him on that score. His job is to secure public acceptance and cooperation in a most difficult and delicate task of persuading the American people to suffer the sacrifices that are going to be necessary in the days ahead. The meeting was held in a room off the conference committee room and the audience was restricted to the Congressmen who were members of the conference committee. Chairman Staggers permitted several witnesses to appear before the conference committee and explain amendments. I agree that such a procedure is appropriate. We cannot have too much information or explanation especially on consideration of intricate legislation and deliberation over floor amendments that may not have undergone the test of hearings and investigation. But such presentations must be in the open and away from the suspicion that a secret deal is being made in the "other room."

I was not aware of anything that transpired in Mr. Simon's secret meeting that could not have been openly and fairly presented. As a result of the meeting there were modifications in the bill and the ones that were adopted are ones in which I can concur. I am informed—hearsay—that Mr. Simon outlined a program of conservation measures that he proposed to take. No report was there, no secretary took them down. However, Senator Fannin did write the list down in his legible and classic penmanship and made the list available to those of us who did not deign to meet with Mr. Simon in the "other room." The proposals are as follows:

1. Retail gasoline sales may be banned from 9:00 p.m. Saturdays to 12:01 a.m. Mondays.

2. An additional day on which retail gasoline sales may be banned.

3. Maximum speed limit of 55 MPH for inter-city buses and trucks and 50 MPH for automobiles.

4. Ban promotional, display and ornamental lighting by commercial establishments, including advertising identification lighting at times not essential.

5. Reduce fuel for use by general aviation.

6. Ban exterior residential ornamental lighting.

7. Turn down thermostats 6 degrees in residential and 10 degrees in commercial establishments.

8. Promote weatherizing of homes with insulation, weather stripping and storm doors and windows.

9. Require that retail sales of gasoline be limited to a specified amount per sale or per day.

10. Take necessary steps to encourage car pooling, including restricting driving to a certain number of days per week.

11. The ability to direct all facets of industry to function in a manner consistent with our goals.

12. Require conversion of oil burning electrical generating plants to coal, to the greatest extent practicable.

13. Set indoor lighting standards for commercial, governmental and industrial facilities.

14. Restrict weekend and evening lighting in commercial and industrial facilities.

15. Set standards on highway lighting.

16. Reduce recreation on public lands.

17. Limit hours of operation for commercial, industrial and governmental establishments.

18. Reduce space heating in industrial establishments to the greatest extent practicable.

19. Require industry energy audit plans.
20. Ban advertising which encourages excessive use of energy.

I applaud most of them, I believe the American people will attempt to carry them out, many of them are overdue. But for the life of me I cannot see why Mr. Simon's statement could not have been made in open conference.

The incident to which I have alluded points up the necessity for Congress to open conference committee discussions to the public, to the press, to interested parties from organizations concerned. A great deal has been accomplished in this 93d Congress for open and public markup of bills, for elimination of closed executive sessions, for conducting the people's business in the people's presence. The next move is to open conference committee deliberations to the same public scrutiny. I urge my colleagues to join me in this attempt in the next session of the 93d Congress and insure that such a secret meeting in a room away from the accepted meeting place never again take place in the Congress of the United States.

Mr. RANDOLPH. Mr. President, the twin pressures of time and a crisis situation resulted in the urgency for this legislation coming before the Senate at this time.

This measure was expedited, but it was not hastily considered. Our work represents an effort by Members of the Senate and House of Representatives that was constructive in the light of the current energy supply situation.

This measure is a realistic response to a set of circumstances that developed rapidly in recent months to greatly accelerate the gap between our growing energy demand and the supply of fuel for meeting these demands. The situation required immediate action to provide Federal, State, and local governments with the tools necessary to cope with the energy crisis.

The conference report before us responds to the crisis without undermining the basic integrity of other long-term Government activities.

Mr. President, while I have been deeply involved for 14 years in the Senate in fuel and energy questions, my efforts during this conference were concentrated on those matters that are within the jurisdiction of the Committee on Public Works. Primarily, these were concerned with amendments to the Clean Air Act.

There has been an inclination by some people to place the entire blame for the energy crisis on environmental protection programs. I consider such statements to be in error.

Environmental protection laws were enacted to protect public health from the continued pollution of the world in which we live. In some instances, these important efforts have resulted in an increase in fuel demand. But these increases are small in comparison with the present fuel shortage.

The provisions of this bill are in no way a retreat from the commitment of the Congress to facilitate the ending of pollution of all types. The conferees agreed to temporary variances in some requirements of the Clean Air Act to meet the present crisis situation. These provisions are realistic and they are workable.

In arriving at these decisions, the conferees rejected proposals that did not relate to the alleviation of energy shortages in a meaningful way. The approval of some proposals, in fact, would have dealt unacceptable blows to the cause of environmental protection.

Just a few days ago the Senate passed S. 2772, a bill extending for an additional year the emission standards applicable to 1975 model automobiles. This action resulted from extensive study by the Committee on Public Works on the total question of motor vehicle pollution and the requirements for reducing it. The committee felt that this was the only change in the program that was warranted at the present time.

The House of Representatives, however, approved legislation granting far more lenient exceptions to the emission control requirements and to other provisions of the Clean Air Act.

The conferees resolved the differences of the two bodies in a realistic and acceptable manner.

The conference report incorporates the 1-year extension of the 1975 emission standards for hydrocarbons and carbon monoxide and gives the Administrator of the Environmental Protection Agency the authority to grant another 1-year extension. **[Sec. 203(a).]**

In addition, it provides an emission standard for oxides of nitrogen at 2.0 grams per mile in model year 1977, as provided in the House bill, without any further extension of the statutory standards. **[Sec. 203(b).]**

Deleted or modified in the conference report are a number of House provisions related to transportation controls and implementation plans in the air pollution control program.

In adopting these aspects of the conference substitute, the conferees did not intend to question either the need for or the authority of the Administrator of the Environmental Protection Agency to impose transportation control plans.

Transportation is a necessary service, and it is provided under an extensive system of government regulations, often heavily subsidized by public funds. In many American cities in the past generation a pattern of decisions at all levels of Government has shaped a diffuse and auto-dependent transportation network. This network is often as much a source of air pollution and energy waste as emissions from the individual automobile itself, and action at all levels of Government will be required to change it. In particular, State and local governments must insure that the total transportation system is operated and developed in a manner as consistent as practicable with air standards. It is expected that the Environmental Protection Agency, in seeking enforcement of the requirement of transportation controls which it has promulgated, will take action against reluctant States requiring that such a State exercise its powers over transportation and implement transportation controls which have been promulgated as Federal law.

The conference report also authorizes some relaxation of air pollution requirements for stationary sources. Primarily, these are intended to permit—on a temporary basis—the conversion of some powerplants from scarce oil and natural gas to more plentiful coal. This switch cannot take place, however, if it would result in a substantial risk to public health. **[Sec. 201, Sec. 119 CAA.]**

All of these provisions relate directly to the present fuel shortage. Other proposals will be given consideration next year as the committee continues its oversight review of the implementation of the Clean Air Act.

Mr. President, in arriving at this conference report, the conferees considered all of the many facets of the energy shortage as parts of a large and complex picture. We did not look at each issue in isolation.

We attempted to relate each problem and each proposed solution to the total energy situation.

We know, for instance, that the United States has abundant supplies of coal, but they do not suddenly appear at factories and powerplants in sufficient quantities for use in an environmentally acceptable fashion.

The conferees were concerned for the loss or decrease in existing energy supplies as a result of inadequate supplies of materials and equipment. For example, there could be a substantial loss in coal production, because of the lack of mining supplies such as roof bolts.

The conferees provided authority to assure that timely steps be taken to assure the maintenance of existing energy supplies through the allocation of necessary equipment and supplies. **[Sec. 107.]**

The Administrator must exercise the accelerated procedures in this act in order to facilitate the timely implementation of this program. Where the maintenance of existing energy production is at stake I would encourage the Administrator to exercise such acceletrated procedures and transmit within 30 days to the Congress these portions of the contingency plan affecting existing energy production. Such plans or portions thereof for the allocation of materials and equipment would have to reside before the Congress for 15 days subject to the same congressional conditions of disapproval or approval as for an energy conservation plan.

It was at my urging and with the support of my colleagues the conference report express the firm intent that handicapped Americans be given special consideration in the allocation of energy supplies.

I believe that if it was possible to make special provisions for these individuals during World War II, appropriate measures can be taken to provide for their special needs during our present crisis.

I would expect that during the promulgation of the regulations by Mr. Simons, special consideration will be given to the handicapped person who needs to drive a specially designed vehicle to and from his place of employment, because he is unable to use public transportation due to his physical disability; and I certainly believe that handicapped citizens in need of medical and therapeutic services will also be given a priority.

These are some of the basic necessities of many of our very young and elderly handicapped. as well as those who are employed.

In summary, we intend that careful thought be given to this population and that we not add further to their hardship.

Mr. President, this conference report is a broad measure relating to the full spectrum of the energy shortage. It addresses immediate needs forthrightly. It postpones for full consideration in the new congressional session those matters about which there is doubt or which will have no significant effect on energy supplies or consumption.

In short, this is legislation which will enable us to face increasing energy shortages in the months immediately ahead while we develop long-range measures to assure our country of adequate energy supplies in the future.

Mr. Randolph. Mr. President, I understand that the December 13 mandatory fuel allocation regulations proposed by the Federal Energy Office give our Nation's schools the place of high importance which they deserve and I am very pleased about that.

The Senator from Washington knows that a general purpose of this act and the mandatory Petroleum Allocation Act is to protect the public welfare and maintain all essential public services. In this connection I ask the Senator about the intent of this measure with regard to education. It is my impression that this bill is not intended to result in a forced closing of schools, and that the educational process and schools will continue with a minimum of disruption.

It is my understanding also that the conference report language on education coupled with the Senate record on passage of the Emergency Petroleum Allocation Act, insures that education will be treated as a vital public service whenever priorities are estabilshed under section 4 of the Emergency Petroleum Allocation Act.

Does the able Senator from Washington concur in this analysis?

Mr. JACKSON. Mr. President, the Senator from West Virginia is correct in his analysis of the intention of this measure. The conferees report intends that education be considered a vital public service.

Mr. FANNIN. Mr. President, first of all I want to commend the distinguished Senator from Washington. I want to say that he did nobly in fighting off the House amendments and supporting the Senate's bill. He did not want the windfall profits provision in the House bill, and offered a substitute calling for a study. He offered something that would provide for a thorough study on this particular subject, and I commend him for that, because, as the distinguished Senator from Louisiana has stated, this is a matter that should be given careful consideration in hearings and should come before us in the Senate Finance Committee next year.

Mr. LONG. If we are talking about an excess profits tax or a windfall tax, does not the question first occur, What is windfall profit or an excess profit? The first thing we need to do is determine what is excess and what is not excess.

Mr. FANNIN. I agree wholeheartedly with the Senator, and this was a subject that was discussed. The conferees never even had a chance to see the language of the legislation until it was placed on their desks this afternoon. This is just exactly why the Senator's statement is so precise in presenting to the Senate some of the problems we have with this legislation.

Mr. LONG. Is it not also true that if we are ever going to solve the energy crisis, we are going to have to permit the energy industry to make enough profit so that it can raise the capital necessary to provide the public with energy?

Mr. FANNIN. I wholeheartedly support exactly what the Senator has said. We have talked about increased exploration, about the tremendous cost.

They say that by the year 1985, it will take $1.350 trillion of investment into this industry, if we are going to succeed in bringing forth the amount of petroleum and other products that will be needed. This is in the energy field alone: $1.350 trillion.

How can that be obtained? They are proposing that as much as $650 billion would need to come from the petroleum industry over that period of time. There is not any way we can get that money invested if we are going to have some device which is absolutely unworkable.

Just what has been explained here this afternoon shows how unworkable this rebate system would be as called for in section 110 of

the conference report. It is just impossible to calculate what the cost would be and what the results would be.

Mr. LONG. Is this not basically about the way that the Chase Manhattan Bank, we will say, which makes large amounts of loans, perhaps as much as any lending institution in the world, or maybe even as much as any lending institution in America, figures, in analyzing how we will meet our energy needs here and around the world, that it will take about $1.350 trillion to provide us with the free world's requirements of energy between now and 1985?

Further, that it is estimated that to raise that much capital, the industry must make enough profit to borrow money if the lenders are to be regarded as having security for a loan that would justify a banker or any other institution making it? And further, that in order to do that, the industry should be able to earn at least half of the amount in profits in order to justify the bankers and the other lending institutions in lending the other half?

Mr. FANNIN. Studies that have been made by perhaps the most qualified people in the world indicate exactly what the Senator has said, that it would take approximately $650 billion that must be recovered from the industry if this is to be done. It must be invested by industry. This can only come from profits. If we place legislation into effect that discourages industry from going forward with exploration—and some of the explorations are tremendously expensive—we are defeating the whole purpose of the bill, which is to help to accomplish the objective of having more energy available for the American people and at a lower cost.

Mr. LONG. Is the Senator aware of any hearings, any information, or any evidence produced in the legislative history of the bill, which has made a proper allowance and has demonstrated how the industry can raise enough money to do what is required of it under this excess profits tax or any other bill?

Mr. FANNIN. The Senator is correct. Studies have not been made by Congress. They have been made, as I stated originally, by Congress and people who are highly qualified, but that has not been presented to Congress for consideration. We have not had the opportunity to question the witnesses that would appear before the Congress to verify this information. So we have just been dealing in the dark. It is not the way the legislation should be handled.

Mr. LONG. Is it not true that we already have laws that provide the authority for the Government to control the price of oil as well as gasoline to come?

Mr. FANNIN. That is correct.

Mr. LONG. They already exist. So that any law to protect the public in the price of the product is already available to us. There is even more authority in the law than the administration is using at this time, as I understand it.

Now, it is not correct that while the price of oil is presently being controlled at the pump by the price of gasoline, they do have the power to fix the price at the well if they want to?

Mr. FANNIN. The Senator is correct. The Federal Power Commission has controlled the price of natural gas and that is why we have such a shortage of natural gas today. The Senator is correct. The price of oil can also be controlled under other laws.

Mr. LONG. That being the case, are we not in prospect of having the same situation we had when we were trying to control the price of poultry, with the results we had, that the price fixed for poultry did not permit the farmer to make enough money to pay for his feed. Does not the Senator recall what happened under the law?

Mr. FANNIN. I certainly do. It was disastrous.

Mr. LONG. Was it not also true that the people who had the incubators to produce the little chicks found that they could not charge enough for the chickens to sell them at a profit, that they could not charge enough even to pay for the feed that went into raising the chickens. So, as the Senator knows, they simply destroyed the baby chicks.

Mr. FANNIN. The Senator is correct. That is actually what happened. It was unbelievable. It happened because of the mistakes that were made.

Mr. LONG. Did not that situation remain until someone adjusted the price so that they could make a profit?

Mr. FANNIN. The Senator is correct. The Senator will remember very well what happened to the price of beef when it was under control, that prices went sky-high, but when they took off the controls, what happened was that the ranchers who thought they were going to sell their beef at 80 cents a pound, found out that they could not even sell it for 60 cents a pound.

Mr. LONG. I am sure the Senator will agree that, like that situation, the filling stations will be closing down and refusing to sell gas because they are not permitted to make an adequate profit in order to operate their filling stations. Is that not correct?

Mr. FANNIN. The Senator is absolutely right. That is an appropriate illustration.

Mr. LONG. The Senator is familiar, I am sure, with what happened to the drivers of the trucks on our highways. They blockaded the highways because they were not permitted to make enough money to drive their trucks because of the speed limit that was placed on them.

Mr. FANNIN. The Senator is correct. That is another good illustration of how ridiculous it would be to adopt this legislation.

Mr. LONG. Does not all that indicate that someone should have a slight idea of what he is doing when he starts tinkering with the economy and trying to regulate someone's industry?

Mr. FANNIN. It is absolutely essential, if we are to overcome the problems we have on energy. It will be done only through the free enterprise system which has always been able to meet the challenge. Here, we are taking away the very incentives that they need to go forward with their investments, for the research and development and the exploration, and to build the refineries and to do what is necessary, including offshore drilling, which are tremendously expensive operations which entail expensive facilities that must be constructed and built for the transportation of the fuel. All of this enters into the problem we face. Unless we have the money available to do it, the situation will be worse than it is today.

Mr. LONG. The Senator serves on the Committee on Interior and Insular Affairs which initiated this legislation, does he not?

Mr. CANNON. The Senator is correct.

Mr. LONG. Can the Senator tell me how many days and hours of hearings have been held to arrive at the profit level that would be appropriate for this industry which this bill would seek to regulate on a profit basis?

Mr. FANNIN. The Senator has brought up a subject that has not been thoroughly discussed. In fact, we did not have, in the Senate version of the legislation, as has been brought out this afternoon, through the stipulations that are involved in our discussions, we did not have before us the matters—that is, the testimony about it, and calling in the expert witnesses. That has not been done.

I serve with the distinguished chairman of the Finance Committee. It was our obligation to study this measure. The administration has sent up a bill with recommendations on excess profits. I know that the distinguished Senator, the chairman of the committee will be considering those measures at the proper time.

When we talk about what is happening, we are not, in this legislation, doing anything that cannot be covered just as comprehensively if not more adequately, after we get back as now, insofar as excess profits—windfall profits, are concerned.

Mr. LONG. If we are going to pass a law against excess profits and pass a well-considered measure in the national interest, is it not first necessary to determine what is a fair level of profit?

Mr. FANNIN. It is very essential to do so. I might say to the distinguished Senator that we have before us this morning information regarding profits in other industries, and the oil industry is far below the profits of most of the industries that were discussed. I would say it is not only proper but absolutely essential that we know what we are doing in this respect before we vote on such a subject.

Mr. LONG. Has the Committee on Interior and Insular Affairs sought to hold hearings and pinpoint the exact level of the profits that would be proper and fair for the oil industry?

Mr. FANNIN. The answer is that they have not. The Committee on Interior and Insular Affairs has not done so.

Mr. LONG. Would it not be well, if the committee wanted to provide something of that sort, that they at least would give us the benefit of their information, after they have obtained such information?

Mr. FANNIN. I would certainly think it would be highly proper. I can certainly commend the distinguished chairman of the Committee on Interior and Insular Affairs, who did fight for this very stipulation in the bill. As I stated earlier, he did offer an amendment, a substitute for this language, that would have provided for a study. It did not say that the study would be made by the Committee on Interior and Insular Affairs, but it would be a study that could be made by the Treasury Department and would, of course, be sent to the proper committee.

Mr. LONG. To whose expertise are we indebted for this measure which, we are told, is neither a tax nor a revenue measure, even though it determines how much money the oil people and the producers of energy should be permitted to make in this country? Whose expertise—who is the expert that worked all this out and has he necessary knowledge of the industry to advise us what the proper level of profits should be?

Mr. FANNIN. I can say to the distinguished Senator that to my knowledge there was no information furnished to the conferees. Any information would indicate from the studies that have been made that the expertise that should have been involved was utilized. So, as far as I know, the committee handling the measure in the House, and of course the Senate too, has not been involved in the studies. At least, the Interior Committee, which was handling it, has not been involved in these studies. The Interior Committee was the leading committee, although the other committees were involved—the Commerce Committee and the Committee on Public Works—on specific sections.

I commend the Senator from Maine (Mr. Muskie) for what I thought had worked out some part of the difficulties. Certainly, as to the clean air part, I commend him and particularly the Senator from Tennessee (Mr. Baker) and the other members they worked with for their excellent services in providing the conferees with the proper information and the wording that would assist in getting through legislation that is needed at this time to accomplish the objectives we are talking about.

But getting back to the specifics that would be involved in the Finance Committee. I would say that we just did not have information furnished to us that would justify our taking the action that was taken by the conferees.

Mr. LONG. Then, do I correctly understand that we are to be asked to vote on this matter without knowing the credentials of the expert who has worked out this proposal to determine the level of income that the industry requires to operate in the national interest, that we are not to be permitted to know what information he used to arrive at his conclusion; nor, for that matter, are we even to be permitted to know the identity of that expert?

Mr. FANNIN. That is correct.

The Senator from West Virginia (Mr. Randolph) was extremely helpful. He was working on a specific part of this measure. He did the work, and he did it well. This was extremely helpful. But this does not involve what we are talking about here today. It did not involve the sections that the Senator is referring to in his comments. The Senator from Alaska (Mr. Stevens) also made an outstanding contribution.

Mr. LONG. That reminds me of the story we used to hear around here, about the boys who were playing football. Near the end of the game, a substitute quarterback was rushed in. He called a play and scored a touchdown, which won the game.

The coach asked him how he came to call that particular play. The quarterback said:

I looked at our guard, Joe. He was all worn out and tired and bloody from fighting all day, and I looked at the number 8 on his jersey. Then I looked over at Jim, who had been fighting them all day, and he had number 15 on his jersey. I thought about how they had been fighting for victory for our school, and I put those two fine men together, 8 and 15 are 27, so I just called play 27, and we went for a touchdown.

The coach said:

Boy, don't you know that 8 and 15 are 25?

The quarterback replied:

Coach, it's a good thing I don't know as much as you do, or we would have lost the game.

Does it not appear that that is the way one went about providing the manner in next few years?

Mr. FANNIN. Yes. The only difference is that he won the ball game and we did not. When we got through with this conference, we had not won the ball game.

The Senate conferees fought very hard for good positions in this legislation and to delete some of the sections that were not needed, which properly should not have been included in the bill. But we were unsuccessful. The results certainly were not as desired. We on the Senate side did not win the ballgame in the conference.

Mr. LONG. Can the Senator advise us whether any suggestion was made in the course of all this that the people who have expertise in the area, who know something about the industry, should be permitted or invited to come before the conferees or before one of the two committees and give the committees the benefit of their knowledge whether it be in the banking field, in the production field, or in the refining area? Was any of that sort of information sought in arriving at this, to the Senator's knowledge?

Mr. FANNIN. The information the Senator is referring to was not. We were privileged to have some of the administration witnesses there, who discussed some of the provisions in the bill, but they did not offer expertise in any certain field. They did not offer information to us that was available to them because of their experience and expertise in a particular field—such as the Senator is referring to, of exploration, refining, distributing, marketing, or whatever it might have been.

The Senator is correct. When we look at what resulted, it was a very hurried placing together of different segments. I understand that it came from many amendments, because they talked about 80 or 90 amendments that were offered on the floor of the House of Representatives, perhaps more than that. It seems to me that in this one section which they must have gathered together from many amendments, without trying to place them together so that there would be continuity or connection, one to the other. It is just a mass of words that I think would create confusion. When one asks to have it explained, it it very difficult for an explanation to be given.

Mr. LONG. What comfort can we take from the fact that the conference resulted in some language to the effect that this tax will go into effect as of January 1975, retroactive for the entire year of 1974, unless in the interim Congress should change it? What comfort can we take from that?

Mr. FANNIN. Very little comfort; because, as the Senator well knows, there is no assurance that Congress would take action. If the Senate took the action, if we were able, as the Senator well knows, to get the bill through the Finance Committee, which would be the proper committee to handle the subject we are discussing, we have no assurance of what would be done on the floor or what would be done in the other body. There is no assurance that that would come out.

This is what was stated several times: "Why worry about these provisions? We can do whatever is necessary next year—that is, 1974—in the proper committees, and it will all replace this particular language."

The Senator has expertise in this field. He is perhaps one of the leaders in this body in that respect, as to just what can be done. He has been a Member of this body for many years and certainly has been a leader in this field, and he knows the tax problems perhaps better than any other Member of this Senate.

Mr. LONG. Is it not true that Congress always has the power to repeal a bad law, or, for that matter, even a good one?

Mr. FANNIN. The Senator is correct.

Mr. LONG. So that when one says that this law will take effect unless Congress changes it, is that not like saying zero?

Mr. FANNIN. That is right.

Mr. LONG. Is it not self-evident that a bad law can always be repealed?

Mr. FANNIN. That is true.

Mr. LONG. If you can get the votes.

Mr. FANNIN. If you can get the votes.

Mr. LONG. But has the Senator found how difficult it is to repeal some of the bad laws that are on the statute books?

Mr. FANNIN. I have heard it said that it is twice as hard to repeal something as it is to pass something. So this is what we would be up against. Not that it takes that many more votes; but when something is in the law and one is seeking to take it out, many Members of Congress are not so concerned about it, and perhaps in many instances they are not cognizant of the ill effects of it, so they just do not do anything about it. It is easier not to do anything than to do something about it.

Mr. LONG. Is it not true that the administration, speaking for President Nixon, and the experts available to him and the Interior Department, advise us that one of the best things we could do to meet the energy crises would be to decontrol price regulations of gas and make it competitive?

Mr. FANNIN. That is correct, and I am not from a producing State. But I do know that the consumers in my State of Arizona would benefit more from that than anything else we could do because now they are short of natural gas.

To use an illustration, in the city of Tucson, Ariz., in 1972 electricity was generated 91 percent by gas and 9 percent by oil. This January they are allotted 3-percent natural gas and 97-percent oil. Now they are told that they are being cut 35 percent in oil. If this situation is not corrected, it means they will be rationing electricity in that city and that means that they will be cutting off customers. It may get down to the point where they cannot serve residential customers and, perhaps the northwest section will be off from 6 until 12 and another section will be off from 12 until 6. 25 percent would be on electricity. They are faced with a sad situation, and only because natural gas is not deregulated.

Mr. LONG. Is it not true that the Federal Power Commission which has the duty to administer the price of natural gas, and to control it,

has recommended that natural gas be deregulated, and that the Washington Post, which applauded the decision to regulate natural gas in the beginning, has subsequently decided in an editorial that they agree that natural gas should be deregulated? Notwithstanding all that, is it not true we have been unable to obtain a bill that would bring about deregulation of natural gas, even though the administration is recommending it, and they are the people who have the responsibility to regulate it? Even such great spokesmen for liberal causes as the Washington Post have recommended it.

Mr. FANNIN. The Senator is correct.

Mr. RANDOLPH. Mr. President. In this body, in recent days we have had the opportunity to debate what many of us have advocated: That the price of new sources of interstate natural gas be deregulated. But efforts on the Senate floor have not been successful.

I am one who has taken the position that there should be such deregulation. On at least two recent occasions such efforts have resulted in the tabling of amendments. So we cannot criticize the other body—the House; however, we can bear the criticism ourselves for having failed, where if there was the opportunity, perhaps, to present and consider this matter on an up or down vote.

For just a moment I am going to ask the Senator from Arizona some questions. That is really why I rose. I do not desire to infringe upon the time of the Senator from South Dakota (Mr. Abourezk), but I have been on my feet for some 10 minutes, attempting to obtain recognition.

Mr. RANDOLPH. My purpose is not to annex unto myself time I should not have, but the conference report does not completely satisfy the Senator, although I signed the report, and I support the conference. I also hope that in a reasonable period of time we shall be able to vote on the conference report—either up or down.

I ask the Senator from Arizona, does he not recall what I said in conference, as late as this morning on excess profits. When we discuss the matter of excessive or windfall profits, we are talking about criteria. Therefore we must be very careful, if we require use of the base period concept, for this criteria is fraught with problems.

On the Senate floor, a few days ago, we were considering problems connected with increasing coal supplies. At that time, I asked how we could realistically compare 1973 coal prices with the base period of 1972, when coal production productivity has been down in 1973. So we have run into severe difficulties with this criteria.

Mr. FANNIN. The Senator is correct; he is very explicit in bringing that out, in explaining it, and in giving an illustration.

Mr. RANDOLPH. In the conference I said that I felt the Senator from Alaska (Mr. Stevens) had a more exact criterion; he proposed that judgments on what constitute windfall profits should take all the major industries into consideration for the same time period. This should be compared with the petroleum industry for the same period of time.

Mr. FANNIN. The Senator is exactly correct.

Mr. RANDOLPH. I want to clarify the Record, because the petroleum industry profits have been mentioned here in a passing reference compared to other major industries in the United States.

It has been pointed out by the Department of Commerce that during the first 9 months of this year the petroleum industry had profits of 13.2 percent. For perspective, this figure compares on what we call an equity or on an investment basis to other profits in the same period of 16.5 percent for appliances; 17.5 percent for the automotive industry; almost 20 percent in drugs; in electronics, it was 15.2 percent, and for publishing it was 13.9 percent. It also is pointed out that only the Nation's railroads, with a rate of return of 6.1 percent, had a lower return on equity than the petroleum industry.

Was that not discussed today?

Mr. FANNIN. The Senator is correct. That was discussed quite thoroughly, and he explained in detail exactly what information had been given to him. As I recall, it came from one of the governmental departments. That was certainly accurate information in respect to what has happened to these various industries.

Mr. RANDOLPH. Mr. President, I appreciate this opportunity to ask questions of the able Senator from Arizona in reference to the consideration of these matters. I think he will agree with me that in the interest of equity and our country, we best not attempt to make so-called whipping boys, to use a trite expression, out of this industry or industries that contributes so much to the energy resources development of our country. By the very nature the business it involves very heavy capital investments in oil, gas, and coal exploration and development in order to bring these energy resources to the marketplace.

Mr. FANNIN. The Senator is correct He has adequately covered this subject. Not only that, but I have heard the Senator explain the necessity for these industries to go forward in order that they can have the resources that will be needed to fully engage in these activties, and in order that we would have in these specialized industries the expertise that is so necessary to accomplish the objective now before us of overcoming the energy crisis.

Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from South Dakota (Mr. Abourezk) and that when the matter he is discussing is disposed of I will then have the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ABOUREZK. Mr. President, I thank the Senator.

At this time I think there are enough Senators around to try to get a sufficient second. On the motion I am going to offer to recommit, I ask for the yeas and nays.

The PRESIDING OFFICER. It will take unanimous consent, unless the motion is made first.

Mr. ABOUREZK. I will just make the motion first.

Mr. President, I move that the conference report on S. 2589 be recommitted with instructions that the conferees accede to the House position on banning oil shipments to Southeast Asia.

Now I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. JACKSON. Mr. President, I move to lay that motion on the table. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second on the request of the Senator from South Dakota?

There is not a sufficient second.

The yeas and nays were not ordered.

Mr. ABOUREZK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ABOUREZK. Mr. President. I ask unanimous consent that the order for the quorum call be rescinded.

Mr. LONG. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The second assistant legislative clerk resumed the call of the roll, and the following Senators answered to their names:

[No. 615 Leg.]

Abourezk	Cranston	McGovern
Allen	Fannin	Metcalf
Baker	Griffin	Muskie
Bartlett	Hansen	Nelson
Bible	Hart	Randolph
Byrd, Harry F., Jr.	Hughes	Scott, Hugh
Case	Jackson	Scott, William L.
Cook	Long	Williams

The PRESIDING OFFICER. A quorum is not present.

Mr. BIBLE. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nevada.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Bayh	Humphrey	Pell
Beall	Johnston	Proxmire
Biden	Kennedy	Ribicoff
Burdick	Magnuson	Schweiker
Byrd, Robert C.	Mansfield	Sparkman
Chiles	Mathias	Stennis
Clark	McClellan	Stevenson
Curtis	McGee	Symington
Dole	McIntyre	Thurmond
Hartke	Mondale	Tunney
Hathaway	Montoya	Weicker
Hruska	Nunn	Young
Huddleston	Packwood	

The PRESIDING OFFICER (Mr. Cook). A quorum is present.

The question is on agreeing to the motion of the Senator from South Dakota (Mr. Abourezk) to recommit the conference report with instructions.

Mr. ABOUREZK. Mr. President. I ask for the yeas and nays.

Mr. MANSFIELD. Mr. President—Mr. President——

Mr. ABOUREZK. Mr. President, I ask for the yeas and nays.

Mr. MANSFIELD. Mr. President, I am seeking recognition——

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. MANSFIELD. Mr. President, despite the fact that I am 100 percent in favor of what the Senator from South Dakota (Mr. Abourezk) is endeavoring to do, and because of the further fact that I do not want to see an already difficult conference report burdened down more—it has enough difficulties already—I move to table the motion of the Senator from South Dakota.

Mr. ABOUREZK. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana to table the motion of the Senator from South Dakota (Mr. Abourezk) to recommit the conference report with instructions.

On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. Bentsen), the Senator from Nevada (Mr. Cannon), the Senator from Idaho (Mr. Church), the Senator from Missouri (Mr. Eagleton), the Senator from Mississippi (Mr. Eastland), the Senator from North Carolina (Mr. Ervin), the Senator from Arkansas (Mr. Fulbright), the Senator from Alaska (Mr. Gravel), the Senator from Colorado (Mr. Haskell), the Senator from South Carolina (Mr. Hollings), the Senator from Hawaii (Mr. Inouye), the Senator from Utah (Mr. Moss), the Senator from Rhode Island (Mr. Pastore), and the Senator from Georgia (Mr. Talmadge) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. Pastore) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. Cotton) is absent because of illness in his family.

The Senators from Vermont (Mr. Aiken and Mr. Stafford), the Senator from Oklahoma (Mr. Bellmon), the Senator from Utah (Mr. Bennett), the Senator from Tennessee (Mr. Brock), the Senator from Massachusetts (Mr. Brooke), the Senator from New York (Mr. Buckley), the Senator from Hawaii (Mr. Fong), the Senator from Arizona (Mr. Goldwater), the Senator from Florida (Mr. Gurney), the Senator from Oregon (Mr. Hatfield), the Senator from North Carolina (Mr. Helms), the Senator from Idaho (Mr. McClure), the Senator from Kansas (Mr. Pearson), the Senator from Illinois (Mr. Percy), the Senators from Ohio (Mr. Saxbe and Mr. Taft), and the Senator from Texas (Mr. Tower) are necessarily absent.

Also, the Senator from New Mexico (Mr. Domenici), the Senator from Colorado (Mr. Dominick), the Senator from New York (Mr. Javits), the Senator from Delaware (Mr. Roth), and the Senator from Alaska (Mr. Stevens) are necessarily absent.

If present and voting, the Senator from Oregon (Mr. Hatfield) would vote "nay."

The result was announced—yeas 31, nays 31, as follows:

[No. 616 Leg.]

YEAS—31

Bayh	Magnuson	Proxmire
Beall	Mansfield	Randolph
Bible	McClellan	Ribicoff
Case	McGee	Scott, Hugh
Chiles	Metcalf	Sparkman
Cranston	Mondale	Stennis
Hart	Montoya	Stevenson
Hartke	Muskie	Symington
Hathaway	Nunn	Williams
Huddleston	Packwood	
Jackson	Pell	

NAYS—31

Abourezk	Dole	McGovern
Allen	Fannin	McIntyre
Baker	Griffin	Nelson
Bartlett	Hansen	Schweiker
Biden	Hruska	Scott, William L.
Burdick	Hughes	Thurmond
Byrd, Harry F., Jr.	Humphrey	Tunney
Byrd, Robert C.	Johnston	Weicker
Clark	Kennedy	Young
Cook	Long	
Curtis	Mathias	

NOT VOTING—38

Aiken	Eastland	McClure
Bellmon	Ervin	Moss
Bennett	Fong	Pastore
Bentsen	Fulbright	Pearson
Brock	Goldwater	Percy
Brooke	Gravel	Roth
Buckley	Gurney	Saxbe
Cannon	Haskell	Stafford
Church	Hatfield	Stevens
Cotton	Helms	Taft
Domenici	Hollings	Talmadge
Dominick	Inouye	Tower
Eagleton	Javits	

So Mr. Mansfield's motion to lay Mr. Abourezk's motion on the table was rejected.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote. I ask for the yeas and nays.

Several Senators addressed the chair.

Mr. MANSFIELD. Mr. President, a motion was made to reconsider the vote, the yeas and nays were asked for, and I demand them.

The PRESIDING OFFICER. The yeas and nays have been requested.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to reconsider the vote by which the motion to table was rejected. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. Bentsen), the Senator from Nevada (Mr. Cannon), the Senator from Idaho (Mr. Church), the Senator from Missouri (Mr. Eagleton), the Senator from Mississippi (Mr. Eastland), the Senator from North Carolina (Mr. Ervin), the Senator from Arkansas (Mr. Fulbright), the Senator from Alaska (Mr. Gravel), the Senator from Colorado (Mr. Haskell), the Senator from South Carolina (Mr. Hollings), the Senator from Hawaii (Mr. Inouye), the Senator from Utah (Mr. Moss), the Senator from Rhode Island (Mr. Pastore), and the Senator from Georgia (Mr. Talmadge) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. Pastore) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. Cotton) is absent because of illness in his family.

The Senators from Vermont (Mr. Aiken and Mr. Stafford), the Senator from Oklahoma (Mr. Bellmon), the Senator from Utah (Mr. Bennett), the Senator from Tennessee (Mr. Brock), the Senator from Massachusetts (Mr. Brooke), the Senator from New York (Mr. Buckley), the Senator from Hawaii (Mr. Fong), the Senator from Arizona (Mr. Goldwater), the Senator from Florida (Mr. Gurney), the Senator from Oregon (Mr. Hatfield), the Senator from North Carolina (Mr. Helms), the Senator from Idaho (Mr. McClure), the Senator from Kansas (Mr. Pearson), the Senator from Illinois (Mr. Percy), the Senators from Ohio (Mr. Saxbe and Mr. Taft), and the Senator from Texas (Mr. Tower) are necessarily absent.

Also, the Senator from New Mexico (Mr. Domenici), the Senator from Colorado (Mr. Dominick), the Senator from New York (Mr. Javits), the Senator from Delaware (Mr. Roth), and the Senator from Alaska (Mr. Stevens) are necessarily absent.

If present and voting, the Senator from Oregon (Mr. Hatfield) would vote "nay."

The result was announced—yeas 39, nays 23, as follows:

[No. 617 Leg.]

YEAS—39

Baker	Hartke	Nelson
Bartlett	Hathaway	Nunn
Bayh	Huddleston	Pell
Beall	Hughes	Proxmire
Bible	Jackson	Randolph
Biden	Kennedy	Ribicoff
Byrd, Robert C.	Magnuson	Scott, Hugh
Case	McClellan	Stennis
Chiles	McGee	Stevenson
Cook	Metcalf	Symington
Cranston	Mondale	Thurmond
Dole	Montoya	Williams
Hart	Muskie	Young

NAYS—23

Abourezk	Hansen	Packwood
Allen	Hruska	Schweiker
Burdick	Humphrey	Scott, William L.
Byrd, Harry, F., Jr.	Johnston	Sparkman
Clark	Long	Tunney
Curtis	Mansfield	Weicker
Fannin	Mathias	
Griffin	McGovern	
	McIntyre	

NOT VOTING—38

Aiken	Eastland	McClure
Bellmon	Ervin	Moss
Bennett	Fong	Pastore
Bentsen	Fulbright	Pearson
Brock	Goldwater	Percy
Brooke	Gravel	Roth
Buckley	Gurney	Saxbe
Cannon	Haskell	Stafford
Church	Hatfield	Stevens
Cotton	Helms	Taft
Domenici	Hollings	Talmadge
Dominick	Inouye	Tower
Eagleton	Javits	

So the motion to reconsider Mr. Mansfield's motion to lay on the table Mr. Abourezk's motion was agreed to.

The Presiding Officer. The motion to reconsider the vote is agreed to, and the vote now recurs on the motion to lay on the table the motion to recommit. The yeas and nays having been ordered on the original motion, the yeas and nays are now in order and the clerk will call the roll.

The legislative clerk called the roll.

Mr. Robert C. Byrd. I announce that the Senator from Texas (Mr. Bentsen), the Senator from Nevada (Mr. Cannon), the Senator from Idaho (Mr. Church), the Senator from Missouri (Mr. Eagleton), the Senator from Mississippi (Mr. Eastland), the Senator from North Carolina (Mr. Ervin), the Senator from Arkansas (Mr. Fulbright), the Senator from Alaska (Mr. Gravel), the Senator from Colorado (Mr. Haskell), the Senator from South Carolina (Mr. Hollings), the Senator from Hawaii (Mr. Inouye), the Senator from Montana (Mr. Metcalf), the Senator from Utah (Mr. Moss), the Senator from Rhode Island (Mr. Pastore), and the Senator from Georgia (Mr. Talmadge) are necessarily absent.

I further announce that. if present and voting, the Senator from Rhode Island (Mr. Pastore) would vote "yea."

Mr. Griffin. I announce that the Senator from New Hampshire (Mr. Cotton) is absent because of illness in his family.

The Senators from Vermont (Mr. Aiken and Mr. Stafford), the Senator from Oklahoma (Mr. Bellmon), the Senator from Utah (Mr. Bennett), the Senator from Tennessee (Mr. Brock), the Senator from Massachusetts (Mr. Brooke), the Senator from New York (Mr. Buckley), the Senator from Hawaii (Mr. Fong), the Senator from Arizona (Mr. Goldwater), the Senator from Florida (Mr. Gurney), the Senator from Oregon (Mr. Hatfield), the Senator from North

Carolina (Mr. Helms), the Senator from Idaho (Mr. McClure), the Senator from Kansas (Mr. Pearson), the Senator from Illinois (Mr. Percy), the Senators from Ohio (Mr. Saxbe and Mr. Taft), and the Senator from Texas (Mr. Tower) are necessarily absent.

Also, the Senator from New Mexico (Mr. Domenici), the Senator from Colorado (Mr. Dominick), the Senator from New York (Mr. Javits), the Senator from Delaware (Mr. Roth), and the Senator from Alaska (Mr. Stevens) are necessarily absent.

If present and voting, the Senator from Oregon (Mr. Hatfield) would vote "nay."

The result was announced—yeas 38, nays 23, as follows:

[No. 618 Leg.]

YEAS—38

Baker	Hathaway	Packwood
Bartlett	Huddleston	Pell
Bayh	Humphrey	Proxmire
Beall	Jackson	Randolph
Bible	Kennedy	Ribicoff
Byrd, Robert C.	McClellan	Scott, Hugh
Case	McGee	Stennis
Chiles	Magnuson	Stevenson
Cook	Mondale	Symington
Cranston	Montoya	Thurmond
Dole	Muskie	Williams
Hart	Nelson	Young
Hartke	Nunn	

NAYS—23

Abourezk	Griffin	Mathias
Allen	Hansen	Schweiker
Biden	Hruska	Scott, William L.
Burdick	Hughes	Sparkman
Byrd, Harry F., Jr.	Johnston	Tunney
Clark	Long	Weicker
Curtis	McGovern	
Fannin	McIntyre	
	Mansfield	

NOT VOTING—39

Aiken	Eastland	McClure
Bellmon	Ervin	Metcalf
Bennett	Fong	Moss
Bentsen	Fulbright	Pastore
Brock	Goldwater	Pearson
Brooke	Gravel	Percy
Buckley	Gurney	Roth
Cannon	Haskell	Saxbe
Church	Hatfield	Stafford
Cotton	Helms	Stevens
Domenici	Hollings	Taft
Dominick	Inouye	Talmadge
Eagleton	Javits	Tower

So the motion to lay on the table the motion to recommit was agreed to.

Mr. FANNIN. Mr. President, it is with considerable sadness and consternation that I rise to discuss the report of the conferees on S. 2589, the Energy Emergency Act.

As reported from conference, this bill not only fails to remedy the energy crisis, would inhibit public cooperation, increase fuel shortages and make the situation chronic.

This bill is a blueprint for chronic energy crisis.

In this legislation, on one hand, Congress is refusing to take the necessary actions to deal with the immediate realities of the crisis; on the other hand the Congress is greatly restricting the effective authority of the President to take action.

It is inconceivable to me that the President—that any President—could accept this bill.

Instead of seeking to solve the energy crisis, this report appears to be aimed at laying blame, at taking punitive action against the energy industry. What we need is to establish programs to work together with all segments of our society to solve this problem; it is foolhardy for the Congress to declare war on the very industry that is essential to resolution of our dilemma.

Mr. President, I would like to explain in some detail the underlying facts which form the basis for reaching the conclusions I have just expressed.

When it became apparent that the conferees were determined to report legislation that would impose upon the President a legislative direction that would "worsen" rather than "cure" the energy emergency, he was so informed.

The President responded by telephoning the leadership of both parties of the House and Senate conferees to discuss the matter with them and seek their cooperation so that mutually acceptable legislation could be developed without necessity of veto. The conferees were requested to recess the conference long enough to meet with Mr. William Simon whom the President dispatched to speak with the conferees.

The chairman of the House and Senate conferees agreed to recess the conference whereupon at about 8 p.m. they adjourned to an adjoining room to meet with Secretary Simon.

Secretary Simon indicated that it was his hope that the conferees would agree to a compromise which would enable the administration to move forward expeditiously to implement broad based conservation measures which could result in sufficient fuel savings to last us through the winter with a minimum of hardship.

The chairman of the conference invited Secretary Simon to state what problems he had with the bill and what conservation measures he would implement if given the authority he requested.

Secretary Simon responded that the three-tiered congressional disapproval provision would impose an impossible dilemma regarding the effective administration of the act. Mr. Simon was asked to volunteer what an acceptable compromise would be. He answered that the administration should be given the authority to impose the conservation measures, already formulated, between the date of enactment and the reconvening of the Congress on January 21, without congressional disapproval authority. To retain the congressional disapproval authority would result, he stated, in such uncertainty on the part of the public that compliance would be discouraged and that segments of the public would actively seek congressional support to disapprove the

administration's actions. The constitutional validity of the congressional disapproval provisions was also questioned.

In response to questions by conferees regarding what conservation action the administration intended to implement, Secretary Simon indicated in great detail precisely what such actions would be. He was asked to prepare a list of such actions and he did. I later submitted this list to the conferees. I will now read it to my colleagues.

LIST OF CONSERVATIONS ACTIONS TO BE FREE OF 15-DAY VETO BY CONGRESS

1. Retail gasoline sales may be banned from 9:00 p.m. Saturdays to 12:01 a.m. Mondays.
2. An additional day on which retail gasoline sales may be banned.
3. Maximum speed limit of 55 MPH for inter-city buses and trucks and 50 MPH for automobiles.
4. Ban promotional, display and ornamental lighting by commercial establishments, including advertising identification lighting at times not essential.
5. Reduce fuel for use by general aviation.
6. Ban exterior residential ornamental lighting.
7. Turn down thermostats 6 degrees in residential and 10 degrees in commercial establishments.
8. Promote weatherizing of homes with insulation, weather stripping and storm doors and windows.
9. Require that retail sales of gasoline be limited to a specified amount per sale or per day.
10. Take necessary steps to encourage car pooling, including restricting driving to a certain number of days per week.
11. The ability to direct all facets of industry to function in a manner consistent with our goals.
12. Require conversion of oil burning electrical generating plants to coal, to the greatest extent practicable.
13. Set indoor lighting standards for commercial, governmental and industrial facilities.
14. Restrict weekend and evening lighting in commercial and industrial facilities.
15. Set standards on highway lighting.
16. Reduce recreation on public lands.
17. Limit hours of operation for commercial, industrial and governmental establishments.
18. Reduce space heating in industrial establishments to the greatest extent practicable.
19. Require industry energy audit plans.
20. Ban advertising which encourages excessive use of energy.

After considerable discussion the Senate conferees voted favorably on the items Secretary Simon had indicated would save the greatest amount of fuel but the House conferees would not concur.

Our chairman of the Interior Committee Senator Jackson supported and obtained support of all of the Senate conferees.

Secretary Simon also stated that the unemployment compensation provisions of the bill were unacceptable because of no ceiling on funds and no criteria for determining causality between unemployment and the shortage of fuels.

Secretary Simon also indicated that in light of the administration's plans to submit windfall profits legislative proposals to the Congress that such provisions were unnecessary at this time in the Energy Emergency Act. Further, he stated that the windfall profit section would create such uncertainty in the industry that investments would not be made to secure additional energy supplies and that the present shortage would be seriously magnified.

Secretary Simon in fact went on at some length about the problems with all three of the provisions he mentioned.

He was thanked for presenting his views and the conferees returned to the conference room to reconvene the conference.

What kind of a response does the conference report reflect?

Congressional disapproval procedures: No change.

Windfall profits provisions: No meaningful change.

At least $500,000,000 of taxpayers' money was authorized for the next 6-month period to compensate the unemployed whose jobs were lost due to the energy crisis.

What standards were imposed to determine the causal connections between the loss of employment and the energy crisis? None.

Theoretically anyone unemployed would be eligible.

Regarding the temporary conservation authority requested by Secretary Simon the Senate conferees voted to give him most of what was requested. **[Sec. 105.]** This was due in large part to the outstanding leadership of the Senator from Maine (Mr. Muskie) and the Senator from Tennessee (Mr. Baker). Both are to be praised for their statesmanship. The other Senate conferees who voted to support the Muskie motion deserve much credit for their understanding of the problem and willingness to act responsibly.

Section 103(d) requires submission of budget requests to the Congress before submission to the President. This is just another attempt to deny the administration the authority it needs to do its job. This section appears to be politically motivated and without a useful or constructive purpose.

Section 124 requires submission by industry of energy reserves and other energy data to the Federal Government. This data applies to reserves both in the United States and elsewhere in the world. The data must be made available to the public. The exception is for proprietary data. In this case the proprietary data on energy must be made available to FEA, Interior, Justice, the FTC, GAO and to any congressional committee chairman which requests it.

The two most obvious faults with this section relate to international operations and to antitrust violations domestically.

By requiring that all data be made public the effect is to make available to foreign oil-producing countries data about U.S. companies doing business there. With such data foreign oil-producing countries can acquire more effective leverage to raise prices at the expense of the American consumer. Clearly this section penalizes the American consumer.

Additionally in the domestic area it almost guarantees leaks of proprietary data. It allows companies in the energy industry to acquire data about their competitors. This can only lead to monopolizing.

Mr. President, this section is the clearest invitation to violate the antitrust laws the Congress has ever had before it. It affects big oil companies and little independent companies too. It is grossly an impossible provision.

There are other problems with the bill too.

Let me say at this time that the antitrust provisions and lack of conflict of interest provisions make it nearly impossible for the administration to work cooperatively with the industry.

The dealer day in court provisions will generate a host of lawsuits while solving nothing.

The windfall profits section, earlier discussed should be discussed at length. I would like to make six points in this regard.

First. Energy supply and demand. There is a correlation between energy use and economic growth. The maintenance of a desirable rate of economic growth in the United States is contingent on the availability of secure supplies of energy. Energy consumption is projected to increase by 50 percent in the 1970's. Oil and gas are expected to provide for about 75 percent of that energy requirement. The time lag between the commencement of the search for new oil and gas reserves and their production once discovered makes it urgent to begin now to improve our energy self-sufficiency.

Second. Capital requirements. In the 1960's total expenditures by the petroleum industry for domestic exploration and development averaged $5 billion annually. The current annual level of such expenditures is approximately $7 billion and will be required to increase about $10 billion for 1975 and $20 billion for 1980. Many billions of dollars more will be required to expand refining capacity and distribution facilities.

Third. Profitability. The fundamental measure of the earnings of an enterprise is not the total dollars earned—profits—but the relationship of earnings to capital invested—profitability. For the 20-year period 1952–71 the average rate of return on net worth for the oil companies included in the Chase Manhattan compilation averaged 11.9 percent compared to 12.2 percent for all other manufacturing companies. In 1972 the rate of return disparity was even greater and was adverse to the petroleum industry. Both profits and profitability of the high-risk, capital-intensive petroleum industry must improve if the industry is to raise the capital required to find and develop new oil and gas reserves.

Fourth. Economic impact of **section 117. [Sec. 110.] Section 117** of the House passed bill, adopted by the conference, would impose a profit limitation with a 1967–71 base period. This would result in a reduced return on capital investment. Different economic conditions existed in the base period from those currently existing. The unrealistic profit ceiling would compel the industry to curtail operations so as to not exceed the ceiling and future investment would be discouraged. Energy problems would be intensified and prolonged. The petroleum shortfall would be increased immediately. The "ripple" effect would pervade the entire economy.

Fifth. Administrative problems. The recordkeeping problems under **section 117 [Sec. 110]** would be horrendous. Business decisionmaking would be brought to a standstill because of uncertainties over pricing policies. Litigation would be inevitable and extensive. The base period measurement of "the average profit obtained by all sellers" would be a totally impractical concept resulting in arbitrary standards. The Renegotiation Board does not have the capability to administer this program and the Board's effectiveness in dealing with defense contracts would be impaired. Administratively, the provision would create enormous Government and industry bureaucracies engaged in a chaotic exercise in regulatory futility. Government regulation of

natural gas prices has in substantial measure precipitated the shortage of that commodity.

Sixth. Substantive problems. **Section 117 [Sec. 110]** does not make clear what the impact of worldwide operations would be on profit determinations in the base period and in the current period. Moreover, the provision would apparently impose an absolute ceiling on profits instead of a rate of return measurement. The application of the "windfall" test would be on an individual sales basis product by product and would tend to reward inefficiency. Any resolution of these problems would be certain to compound inequities, result in unequal treatment, and impair competition. The section directs the President to prevent "windfall profits" in the first paragraph of the provision and then devotes the several remaining paragraphs to directing the Renegotiation Board to do what the provision impliedly assumes the President will not do. This duality of responsibility is complex, burdensome, and needless. The fact that hearings were not held on the section has contributed to its conceptual inadequacies and its unworkability.

The plethora of study provisions on other matters would impose a costly, duplicative, and unnecessary burden on the administration which should be "taking action" not "making studies" to solve the energy crisis.

There are other provisions, too, which make little sense. But let me emphasize one which is as important as nearly all others. The congressional review procedures in this legislation are unconstitutional on their face.

For these and other reasons the President would be entirely justified in vetoing this legislation. But if he does not and chooses instead to act in good faith to impose conservation measures needed today in order to get this Nation through the winter without excessive hardships, it would, in my opinion, be the heighth of arrogance and irresponsibility for the Congress to nullify by disapproval the actions he will have taken.

The Congress must either decide or delegate. We cannot have it both ways.

Mr. President, I cannot recommend to my colleagues that they vote to support this bill. The bill should be recommended to conference.

The Presiding Officer. The Chair recognizes the Senator from Wyoming.

Mr. Hansen. Mr. President, because my colleagues were not present at the marathon conference on the emergency bill, I would like to take a few moments to supplement the very accurate and comprehensive statement made by the Senator from Arizona (Mr. Fannin), with whom I had the pleasure to serve on the conference. Before my colleagues cast their vote, and before discussing the merits of many of the bill's provisions, I would first like to discuss the implicit dimensions of the conference and the bill.

Mr. President, instead of choosing to come to grips with the critical energy shortage in this country in a rational and constructive way, a separate alternative was chosen. Without a scintilla of hyperbole, I feel it is safe to say that what preceded the conference report could best be characterized as a high stakes political poker game. The chips

that were used by the poker players just happen to be the welfare of the entire American people for the duration of the winter. Whether the American people would be cold or not, with jobs or unemployed, seemed to be irrelevant to the objectives of the game that was played.

I would like to take a minute to describe the game that was played. At the outset it was recognized that there is not enough fuel to go around, and that many will have to do without or with less. There was much rhetoric about the need for the Congress to assert its constitutional prerogative and establish a definitive energy policy for the administration to carry out. But no one knew what that policy should be. Few felt personally competent to delineate such a policy. Few desired to be held responsible for setting definitive policy which could not or would not solve the energy problem.

So instead an attempt was made to shift the blame from the Congress to others. Not surprisingly, the blame and responsibility were shifted to the administration and to the energy industry of the United States.

Had merely the blame and responsibility been so shifted, the least that could have been said is that the legislators chose a cowardly way out. The best that could have been said is that the hot energy football had been punted down to the White House. The administration asked for the responsibility and volunteered to take the blame if the responsibility were unsuccessfully executed.

In a moment I will say more about administration willingness to take the responsibility and the blame.

Returning, however, to the issue of what was done instead, let me say that the legislators chose a different alternative, and that was to assign the administration responsibility for solving the energy crisis without delegating the authority to do the job. What was delegated was a three-tiered pagoda of uncertainty, confusion, and delay. The administration was told that it could implement rationing and conservation programs which would be effective upon their promulgation, but that they would be revocable by a simple resolution of disapproval passed by either House of the Congress within 15 legislative days following the convening of the 2d session of the 93d Congress.

And what would be the standards upon which such rationing and conservation programs would be based? With respect to rationing, the administration was told that it had to exhaust all other remedies before instituting a rationing program, and that an express finding must be made of the impossibility of existing authority to solve the energy shortage before rationing could be implemented. The priorities to be adopted in both rationing and conservation programs were to be those contained in the Emergency Petroleum Allocation Act of 1973, but that such programs "shall be equitable, shall not be arbitrary or capricious, and shall not unreasonably discriminate against users." That additional proviso seemed intended to be an express invitation for 200 million Americans individually or collectively to file lawsuits against the administration on the basis that someone else got more fuel than they did.

Further, Mr. President, not only is the Congress to be permitted to disapprove of such plans instituted by the administration within the next month, but also the Congress is to be given an opportunity

to disapprove parts of such plans. Such a procedure is clearly unconstitutional on its face.

One might ask what is the effect of such an arrangement on the public's willingness to comply. The answer is simple. The arrangement merely encourages the public not to comply by extending an invitation to the public to seek congressional disapproval of any plan or parts of any plan instituted by the administration for the conservation or distribution of fuel.

Returning now to what the administration desired, when the President learned about the rapid breaking developments taking place in the conference he called the leaders of the conference on both sides of the aisle to express his concern about the bill, including the possible necessity of a veto. He also indicated a willingness to work out a reasonable compromise with the Congress. He directed that William Simon meet with the conferees, if that would be acceptable to the conferees, and state his case. The leadership of the conference agreed to the meeting. The conference was recessed and most of the conferees moved to an adjacent room in which Mr. Simon outlined the three most essential concerns of the administration. They were that the administration be given the authority to institute rationing or conservation plans which would be effective upon their implementation without the 15-day congressional approval procedure. Mr. Simon was asked what programs he intended to implement if given such authority, and he wrote them down. They were later made known to all conferees. Second, Mr. Simon indicated that the windfall profits rebate section of the House bill was unacceptable in that it would cause great disruptions to the economy and threaten to further aggravate the already critically short fuel supply situation. Third, Mr. Simon sought that the unemployment compensation provisions be stricken because the criteria determining eligibility for unemployment compensation as a result of the energy crisis were too vague to be implemented. The meeting was adjourned and the conferees returned to resume the conference. None of Mr. Simon's requests were respected.

Let me say, however, that the Senate conferees voted to give Mr. Simon most of the emergency authority he requested. The decision of the Senate conferees is largely a result of the impeccable statesmanship of the Senator from Maine (Mr. Muskie) and the Senator from Tennessee (Mr. Baker). The Senator from Maine, in a most eloquent and sobering plea, indicated that many of the people in his northern State of Maine, and elsewhere in other cold regions of the country, would suffer grave harm unless Mr. Simon were given the authority he requested. He correctly indicated that unless substantial amounts of fuel were conserved between now and the time the Senate reconvenes near the end of January, there would not be enough fuel to last for the duration of the winter in his part of the country.

The Senator from Maine (Mr. Muskie) pointed out that January is the cold month of the year for his State and that if we are going to have enough fuel to get through this coming year to meet the emergency that has been brought about by all the elements that have contributed to this crisis in which this country finds itself, it was necessary to start now, that we had to take those conservation steps now in order to save enough fuel to get through the rest of the year.

It was on his motion that the Senate conferees voted to give the administration virtually all of the authority it needed for taking vital actions to deal with the energy shortage this winter.

Much credit is also due to the Senator from Tennessee (Mr. Baker). He stated that what is at stake is the welfare of the people of this Nation, that what is called for is statesmanship in dealing with what is perhaps the most critical problem facing the Nation at this time. He pleaded with the conferees that they temporarily put aside partisan concerns and fulfill constitutional responsibility in providing for the people of the United States a mechanism whereby the administration could cope with the critical energy shortages to which the country is being subjected this winter.

All but one of the Senate conferees voted to approve the motion of the Senator from Maine. The House conferees by a slim majority chose instead to punish the administration by placing it in a situation in which it would be damned no matter what action it took.

Turning now to the windfall profits issue **[Sec. 110]**, this is the punishment imposed upon the industry which is attempting to supply the fuel for America's needs. In essence, the windfall profit provision provides that any person who feels he has paid too much for fuel may sue for a rebate on that part of the price which represents a windfall profit. The energy industry is burdened with the highest capital is needed to be plowed back into capital costs in its entire history. That capital is needed to be plowed back into the ground in a diligent and continuous search for new energy.

Mr. Bartlett. Senator, in the approaches that have been taken to solve the energy crisis, do you think there has been adequate attention given to that side of the supply and demand equation—the positive side, the supply side?

Mr. Hansen. I would say to my good friend from Oklahoma that had it not been for his earlier effort in getting the stripper well amendment attached to the Alaska pipeline bill, and in consideration of the Alaskan pipeline bill itself, those two measures, the stripper well amendment, and passage of the Alaska pipeline bill, in my judgment, constitute the only positive action of any real significance that this Congress so far has taken to address itself to the problem of supply.

I share the Senator's feelings that we have not done very much about supply. Does that respond to the Senator's question?

Mr. Bartlett. Yes, Senator. I should like to ask you, in approaching the problem we have of sufficient supplies, is it not going to be essential to increase the supplies of the conventional fossil fuels such as coal, oil and gas; and is it not essential for the east coast and the upper Midwest to have additional supplies of oil and gas, and that the only way we can achieve this is to do more drilling, which means that there needs to be additional incentive, which means that the roadblocks need to be eliminated such as the inadequate supply of rigs, the insufficient supply of tubular goods, drill pipe, and so forth?

Are not some of these things necessary for an energy policy that will really solve the problem, so that we are not completely dependent on foreign oil, and if we do reach and achieve the status of some independence, then we can supplement our domestic supply with foreign shipments that will be priced at a much more reasonable level. But if we are completely insufficient and are dependent upon foreign supplies,

we then do not have the opportunity of negotiating a reasonable price so far as foreign imports are concerned.

Is there not just as much need today to start right away with an all-out effort in all directions to increase supplies, just as much as it is for every American citizen to set his thermostat at 68 and to reduce the speed of his car and not to take unnecessary trips, and that sort of thing?

Mr. HANSEN. I would respond to the distinguished Senator from Oklahoma by saying that long before he became a Member of the Senate, as Governor of the great State of Oklahoma, he addressed this situation very clearly and unequivocally on a number of occasions. He recognized then, as he does now, that we live in a nation that is presently 78-percent dependent for all its energy upon oil and natural gas. We do have other sources of energy in the United States, and we are fortunate that that is true. We have enormous coal reserves, probably more coal, by some estimates, than is contained in all the rest of the world. We have oil shale deposits that have been estimated to be capable of yielding as much as 1.8 trillion barrels of shale oil. In addition, we are blessed to have huge amounts of uranium in the United States.

But, as the Senator from Oklahoma well knows, being dependent for our energy supply now to the extent of 78 percent on oil and natural gas, there is no way in the short run, in the short fall, that we can come even close to meeting our energy requirements without taking precisely the steps that have been called for on many occasions by the Senator from Oklahoma. He is quite right. And we have been falling behind, as he well knows.

I ask the Senator from Oklahoma about the drilling activity. What are the facts about drilling? What about incentive? Has there been a diminution in the number of wells drilled and completed in this country? Has the amount of oil and gas we use been going up at the same time that drilling activity has been declining?

Mr. BARTLETT. The figures, very roughly, are that since 1956, we have decreased our drilling in this country by one-half, while the demand has doubled. So if we were to start today and wanted to achieve the same rate of drilling to demand ratio which was achieved in 1956, we would have to increase our number of wells by 400 percent. Our current rate of drilling indicates that we are only up about 15 percent over last year. Last year it was up about that much over 1971, which was the low point. As our drilling declined during that period of 1956 to 1971, we had a comparable decline in reserves of both oil and gas.

I noted yesterday what the price situation was during the period of 1957 to 1969, a period of 13 years. The price started out in that period at $3.09 and then declined, on a rather uneven but saucer-shaped line, until, for the 13th year of that period, in 1969, it was back to $3.09. These are constant dollars.

So this meant, with the large increases in the price of steel, large increases in labor, and so forth, that the net profit to an independent producer had declined rather significantly.

Then, in 1969, Congress, in its wisdom, attached to the tax bill a reduction in the depletion allowance which, at the end of this plateau in price, increased the costs by increasing the taxes of the independents as well as the other companies, to the extent of $500 million; hence, reduced the amount of exploration at that time by that amount.

The reason I am tracing this a little is that this is a part of the reason that right now the total oil industry has very little resiliency. In other words, it has very little capability of expansion. So that as we have this rather modest increase of 15 percent in the number of wells drilled over last year, already a shortage of rigs is appearing. I understand that all but about 20 rigs are currently operating, which means that they are moving from one location to another. We have a shortage of drill pipe for rigs, and some of them are using used drill pipe that probably should not be used. Some producers are finding that they have difficulty in obtaining pipe for completions. A certain amount of hoarding is going on that is creating part of the problem. Nonetheless, there is a great need for more tubular goods to be produced and more rigs to be constructed and more drill pipe, tools, and so forth.

As we look into this problem, we see that when the dollar was devalued the last time, this Nation became overnight an exporter of oil country tubular goods; whereas, up to that point it had been an importer of what was often referred to as cheap foreign pipe—the same quality, but less expensive. We also became overnight incapable of importing pipe because of price controls on the distributors of that pipe in this country.

Then we found, as we looked further into the problem of pipe production, that the profits of the steel companies in plate which is used in large quantities by the manufacturers of automobiles was higher than that of tubular goods; hence, the tendency and the inclination and the profit motive for the steel producers to put as much of their steel into plate as they could, rather than into tubular goods.

Then we found, in looking further, that during that period we relied to a great extent on the inexpensive foreign pipe; that the steel companies saw fit to shut down some of the marginal rolling mills they had because they could not compete on a price basis, and dismantled them, junked them. So that our rolling capacity today is much less than it was at the time of 1956, when we operated twice as many rigs and drilled twice as many wells.

So we had a problem of controlled prices in the still business that was also affecting very directly the ability of the oil industry and the gas industry to increase their activities to find more oil and gas and then to develop it.

It seems to me, too, that people should begin to realize other problems that are definitely on the horizon; in fact they are very visible in the oil industry today, and that is the shortage of manpower. The small number of young people in the oil industry is rather apparent to anyone who attends any meetings of the independents. There is a very sharp line agewise in attendance. If I were advising a young person where I think he would have a great future, it would be in the energy industry because of the expansions that must take place for this Nation to face up to its responsibilities. There is a significant shortage of geological engineers, petroleum engineers, drilling crews, and all the service people connected with the oil industry. This is going to take time, and the colleges and universities must address themselves to this problem in order to develop as quickly as they can in a few years competent people to take care of the various important jobs in the energy industry. This takes some time. In fact, everything I am very familiar with in the energy industry has some lead time and it is because of this lead time that I think it is much more important for us

to get off to a healthy hard-hitting start now rather than postponing the prices and be further behind, in addition.

Mr. HANSEN. I think it is very relevant to an understanding of the various sections of the bill because in the press and on the electronic media for a number of months now we have been subjected to a continuing barrage of statements that the oil companies are making unconscionable windfall profits, that they are many, many times higher than last year, and leaving the impression in minds of most Americans that prices have gone through the roof and that profits have even surpassed profits for last year.

Is it not a matter of fact that last year the oil industry experienced the lowest profit year it had had in a 12-year time and that many of the companies had a very modest profit?

If a major oil company had a profit of only 5 percent last year on its investment money and this first quarter profits were up to 9 percent it could be said there had been an 80-percent increase in profits. Yet an 80-percent increase in profits means, in percentages, only shifting from 5 percent to 9 percent. I would ask my friend from Oklahoma if this is not rather typical of the kind of figuring that has gone into news and television reports about all company profits?

Mr. BARTLETT. Yes, I agree with the distinguished Senator. He has given a vivid example. In a 10-year period up to 1972 oil company profits were under those of the average manufacturer.

The recent profits of the integrated companies for the last 9 months represent primarily their profits from foreign operations in the Middle East, and hence are not showing the picture of the profit situation for the independent who does most of his drilling and development for oil in this country.

I find it interesting to note that in the first 9 months of 1973, as compared with 1972, the New York Times experienced an earnings growth of 91 percent, the Washington Post 57 percent, ABC, 45 percent. This organization had a return on equity in excess of 15 percent, and the return of CBS exceeded 20 percent.

I do not cite that as a bad example. I think profits still must be a good word in this country if we are going to have a viable free enterprise system. I do think that competition must exist in a very real and aggressive way, and we have found that our companies around the world are envied because of their capabilities.

I know it is often said that the oil industry does not have this competitive side to it. From my own experience and observations, I know of no more competitive industry than the oil and gas exploration industry because, in the first place, the great majority of the wells are drilled not by the largest 30. In fact, 79 percent are drilled by other than the 30 largest.

When you compare the impact of that power concentration in other important segments of our American industry, when we see the power concentration in steel, in autos, in aircraft, in computers, where we are talking about power concentrations of about 80 percent, yet in the oil and gas exploration industry, the 30 largest have a very small part of the industry and contribute only 21 percent of the wells drilled.

Mr. BARTLETT. What steps does the Senator consider absolutely essential that this Nation take in order to achieve a reasonable increase

in our supplies of energy? I know it is not just one but many leads that can be taken. First let me ask whether there are any alternatives of which the Interior and Insular Affairs Committee is advised that are cheaper than current prices for the energy available. In other words, are there any alternatives that are not more expensive?

Mr. Hansen. In response to the question by the Senator from Oklahoma, I would say that, in this Senator's opinion, there are no cheaper ways in which we could shore up our flagging energy supply than to give the industry encouragement that an increased price position would cause.

Recalling some testimony presented before at least one committee of the Congress, the chairman of the National Petroleum Council testified, I believe, to the effect that if we consider the return on investment in off-shore drilling in the Gulf of Mexico, in Northern Louisiana, and throughout the rest of the United States in recent months, that rate of return has been between 3.2 and 6.2 percent, which underscores the very fact that is being graphically addressed by the Senator from Oklahoma.

That is a very poor rate of return, and it is understandable why people who otherwise might be putting dollars into the drilling business are seeking other opportunities that they believe offer the prospect for a higher rate of return.

It accounts as well for the fact that our drilling activity has declined nearly half when we compare the year 1972 with the year 1956, and its helps explain the urgency of doing something more than what we are now doing, because during that same period of years, as the Senator has pointed out on many occasions, we in 1972 were using twice as much oil and gas as we used back in 1956.

I would say that the Senator from Oklahoma was precisely right. We ought to give this extra encouragement to the industry. There is no better or cheaper way.

I would ask my friend from Oklahoma, is it not also true that the technology for converting oil shale into shale oil has been worked out to the degree now that, given a reasonable price rise in domestic crude produced today, it would follow that we might expect a greatly increased activity in the oil shale fields of America?

Would it seem reasonable to the Senator from Oklahoma that we could experience this intensified interest in oil shale if we just let the price of crude go up $2 or $3 a barrel?

Mr. Bartlett. Yes; I certainly concur with my distinguished colleague from Wyoming.

I think one of the values of a free market is that, in addition to the producers trying to produce more of a product that goes up in price, they also have an incentive to develop other products or develop other ways of extracting the same product, such as oil from shale; but it takes a certain price to do it. I think, in addition to the legislation that this body has seen fit in its wisdom to pass, it will take a certain development of energy at a certain price to make it an economic reality. The price will differ with different products, but certainly shale oil from oil shale is one of the best opportunities, and one of the biggest and most available to the technological know-how of this country. But it still takes a price to free oil from the shale, because it is a more expensive operation than some other methods.

Mr. HANSEN. Would the Senator from Oklahoma yield for just a moment? I would like to yield to the distinguished senior Senator from West Virginia.

Mr. RANDOLPH. Mr. President, at this moment, under the leadership of the Senator from Wyoming, in colloquy with the Senator from Oklahoma, we are discussing the suggested use of oil shale to alleviate the fuels and energies shortages in this country.

As the two Senators have indicated, there are areas in the Rocky Mountain States and other regions of the West that contain tremendous resources of oil shale.

I recall my visits to Colorado in connection with energy research programs being carried on there. In the mid-forties, I also coauthored with the then Senator from Wyoming, Senator O'Mahoney a synthetic liquid fuels act.

At that time we were not interested in determining whether oil shale could be used as an energy source or whether coal could be processed into gasoline. Frankly we knew that we had a challenge in this country because we were engaged in World War II and German submarines were lurking off the Atlantic coast. That is why we were carrying on a research program on the use of oil shale and on the use of coal to make gasoline.

Just 30 years ago, on November 6, in company with Arthur Hyde, I flew from Morgantown, W. Va., to the Washington, D.C. National Airport in a single-engine Fairchild aircraft that was fueled with gasoline made from coal.

That was 30 years ago, I say to my knowledgeable friend, the Senator from Wyoming.

Mr. HANSEN. Mr. President, if the Senator would yield at that point, where did the coal come from? I am just curious.

Mr. RANDOLPH. The coal came from West Virginia. It was processed, however, at the Bureau of Mines Laboratory in Pittsburgh, Pa. So, we can give credit to those two States.

I recall that 170 miles of flying with some trepidation. As the Senator can well understand, we were coming across the Alleghenies on gasoline made from coal; at a time, very frankly when it was generally felt that aircraft fuel must be processed from petroleum.

We were met at the National Airport by former Senator O'Mahoney, of the State of Wyoming. He gave much thought to the matter of synthetic fuels.

Later, we were to call for these projects such as oil shale. These technologies could have served as a backstop for what we are now experiencing. We knew then in the mid-forties that they would be needed to have energy self-sufficiency within the United States of America.

It does not do much good to talk about yesteryears; however, it is almost tragic to realize the apathy and the complacency which for so long have characterized not so much the American people but, frankly the very doorstep of the administration over this period. This has been true whatever administration or political party has been in power and at the doorstep of Congress—whichever party might have been in power.

Through the years, we simply have taken for granted that our resources were going to be inexhaustible. We knew this was not so then,

and we have since become increasingly aware that there is a very severe energy shortage.

In a very real sense—and I am not critical—we are moving on the conference report as adopted by the Senate and the House conferees on an Energy Emergency Act. I am not critical; each man has his own responsibility. But that conference report was signed by the conferees, we brought it to the Senate, and we should have been able to vote on its provisions; if necessary, striking 1 or 2, to secure the overall passage. This legislation has been brought from the conference after most careful consideration.

Mr. HANSEN. I may point out that the Senator from West Virginia has been eminently fair in calling attention, on many occasions, to the profit figures of various industries throughout the country. It was he who first placed in the Record a list of profits that were experienced last year compared with those in the oil industry: some of the newspapers—some of the bigger ones in the East, which for the moment must remain nameless—as well as some of the TV networks and other industries in America.

I should like to compliment the Senator for his willingness, always, to state fairly and objectively what the facts are. I agree with him most enthusiastically, as I agreed with my good friend from Maine (Mr. Muskie) when he made the excellent comment he made in conference so long ago—was it only last night?—that we should look at some of the issues and decide what we really need to do and to get started on it now.

I salute my friend from West Virginia for his leadership in helping to bring about an understanding that I think is basic to an objective position that we now need to have if we are going to do the right thing for the country.

Mr. RANDOLPH. I appreciate the comments of the Senator and I shall not continue my colloquy longer. The distinguished Senator from Oklahoma (Mr. Bartlett) was really in colloquy with the Senator from Wyoming.

Nevertheless, 30 years ago we had the knowledge, the know-how, and the expertise to process coal into gasoline. Yet 30 years later our country is not energy self-sufficient; but we have a coal supply adequate for 300 to 400 years. We had the capability to develop this resource along with other energy supplies for the benefit of the United States of America. It is rather tragic, I say to the distinguished Senator from Wyoming.

Mr. HANSEN. It certainly seems so to me.

I should like to ask my good friend from West Virginia and also the distinguished Senator from Oklahoma a question. Much criticism has been heaped upon the coal industry for having failed to anticipate what would be needed in the year 1973. Why has it not got on with the business of coal gasification?

Mr. RANDOLPH. And coal liquefaction?

Mr. HANSEN. And coal liquefaction? Why has it not moved in the area of magnetohydrodynamics, whereby coal could be directed or turned into energy. I am referring to the process of firing particles of coal through an electrical impulse field of some kind or other, which results in the generation of direct current electricity.

But I would ask my friend from West Virginia if the price of natural gas, in his judgment, had anything to do with discouraging the coal industry from committing the kind of dollars that many people think were necessary in order to get on with this job of developing the technology to a higher state of perfection than we now find it showing.

Mr. RANDOLPH. The Senator is correct. The price of new natural gas has been too low. Thus the exploration for natural gas could not go forward as fast as needed to meet demand.

We also understand that there are terrific costs of opening new coal mines in this country; what is the return on investment in a coal mine operation? Perhaps 2.5 percent to 4 percent.

Yet, when I think of the return on equity, let us say, in the appliance industry—in the last 9 months—it is 16.5 percent; in automobiles, 17.5 percent; in building material, 14.5 percent; in chemicals, 14 percent; in drugs, 19.9 percent; in electronics, 15.2 percent; in food, 13 percent; in instruments, 15 percent; in office equipment and computers, 16.6 percent; and in publishing, 13.9 percent. Certainly a logical and very natural question, considering these situations before us, is where are the terrific investments going to come for the exploration for oil and gas and for the production of coal? The present situation is almost intolerable from the standpoint of expecting the necessary huge investments to be made. Meanwhile we have relied upon the importation of petroleum from countries in South America, North Africa, and the Middle East.

This is a situation which has not only been fraught with danger, but which has brought this country, frankly, almost to the brink of disaster. This is particularly true from the standpoint of operating our economy which should be built upon energy self-sufficiency.

It is my desire to support this conference report, even though there have been disagreements. I also believe we should act before the day is out. The country expects it to be done. The American people generally look to the Senate and the House of Representatives to do this job; and I do not believe that the President of the United States will veto what is done by Congress in this matter.

I appreciate the opportunity to engage in this colloquy with the Senator, and to point out the need to encourage the production of natural gas, the production of coal, and the production of oil, as well as the development of synthetic liquid fuels. There are many possibilities in this country as my colleague from Wyoming has mentioned.

We find ourselves in a tragic situation at the present time, because of our failure to come to grips with this problem as we should have done.

Mr. HANSEN. Mr. President, I thank my distinguished friend, the Senator from West Virginia, for his great help in bringing about a better and clearer understanding of what the facts are, hoping that it might result in our being able to make a sounder and clearer judgment in a matter that is of extreme concern to every American.

Mr. President, I was speaking before the Senator from Oklahoma and I engaged in colloquy about the fact that the oil industry now is being told that as prices go up, it will be faced with lawsuits seeking rebates. This is implicit in the bill we have before us.

Thus, the industry is now told that if prices go up it will be faced with lawsuits seeking rebates. Thus, the industry is put in the dilemma that if prices go up and, as a result, profits are reinvested in the search for new energy, it will be sued. Or, if prices do not rise, the industry will not have the capital it needs to reinvest in the search for more energy, and the industry will be blamed for failing to increase supply.

Thus, the industry is placed in a position that no matter what it does it will be damned. Mr. President, I ask my colleagues how they can avoid being fairly and properly blamed by the electorate if they cast their vote in favor of the conference report on the energy bill.

Mr. BARTLETT. Senator, on this whole energy area, am I correct that the price of gas is and has been for a long time one of the real problems of having sufficient incentive for sufficient drilling to provide the supplies? Has it not not only reduced the supplies of gas but because of its environmental desirability as a fuel and its low cost, based on the BTUs, has been such difficult competition to oil and to coal that it has tended to keep those prices down and hence those supplies down?

It seems to me that deregulation of natural gas is a vital claim. I am sure that each of us representing our own States tends to look at it solely from our own point of view, but in the case of the State of Oklahoma at the present time our intrastate price of gas is around 63 cents—it might be as high as 65 cents. We have had an adequate supply which has been a result of a significant increase in the drilling. One of our utilities has the second largest amount of reserves of natural gas of any utility in the country. Our position is that we would like to share this gas at the same price to other States through the interstate market but, of course, at the present time, this is impossible. Someone in another State who might be willing to pay the same price we pay ourselves legally, cannot do so.

But because of this situation of having gas in our State available, we have been attracting industry into the State, although from a selfish point of view one might take the position of favoring the status quo, but that does not solve the basic problem of energy for the entire country.

So it seems to me that the Buckley amendment, on which we voted the other day—and I am sorry that more Senators might not have heard the debate—was a way to provide additional gas at a free market price. Those utilities and those industries in those States wanting additional gas at this free market price, to pay it for new and additional gas only, and that the renegotiation of contracts provided in that bill can be committed only with the approval of the FPC, it seems to me that as I analyzed it from a distance of halfway across the country, the plight of the eastern seaboard of sufficient energies, I find some difficulty understanding the position of those who are reluctant to have a free market or to have additional supplies coming from this country.

I noticed an editorial in the Washington Post sometime ago that they plan to add to the gas available in Washington, gas processed from naphtha, which would be synthetic and would cost, available to the gas company in Washington, about $1.50 a thousand cubic feet.

This would increase the total amount available to the utility for distribution to the people in Washington by 10 percent.

I know that there is, in addition to the synthetic fuels, liquefied natural gas available by import from foreign countries—Algeria and others. I know that some of those in the Northeast have had contracts for the acquisition of liquefied natural gas, but the contracts have not been fulfilled.

But it seems to me that a comparison of the price of natural gas in this country shows it competes quite well with other sources, even including the importation of gas, if available, in additional quantities from Canada.

Mr. HANSEN. Mr. President, as I recall in recent months, and I do not know how far back, but this Senator's recollection is that according to the Federal Power Commission, before they made the first price adjustment, they recognized that it was costing more to carry on the exploration, the wildcatting, and the production activities on a 1,000 cubic feet basis, cost-wise, than a discoverer or a producer of natural gas could legally receive for that gas if it were committed to the typical interstate gas line. I ask my colleague if that is true?

Mr. BARTLETT. Yes, that is.

Mr. HANSEN. Is it not a fact that not too many months ago this unrealistic price that had been fixed by the Federal Power Commission and had not been changed so as to keep abreast of costs, resulted in a situation where there was absolutely no incentive for anyone to go out and try to discover a new gas well. Am I right about that?

Mr. BARTLETT. Yes. I would tell the distinguished Senator from Wyoming that he is eminently correct. I might mention that I have some figures before me showing the new gas commitments in the Permian Basin from 1966–70.

For the year 1966, in the intrastate market, in Texas, 16.3 percent of the gas was committed intrastate, and 83.7 percent interstate, for a total commitment of 1 billion cubic feet or 178 trillion cubic feet.

In 1967, it was 21.8 percent intrastate, increasing and dropping in the interstate market to 78.2 percent.

A year later, 1968, it jumped to 87.2 percent in the intrastate market and 12.8 percent in the interstate market. The amount was 156 trillion cubic feet.

In 1969, it dropped slightly to 83.3 percent in the intrastate market, and interstate was 16.7 percent.

But for the first half of 1970, it went up to 90.9 percent in the intrastate market and 9.1 percent interstate, for 113.4 trillion cubic feet.

This means, of course, the point the Senator made, the realistic fact of life, that those who have the gas to sell are selling it to the person who pays him the higher price. The price is roughly, at least in our State, 53 cents compared to 22 or 23 cents.

But it seems to me that when we look at this from the consumers' point of view in the East and use the figures of Washington, D.C., it takes about 57 cents or so—rather, about 37 cents to transport the gas here from the Southwest. Today it costs about 23 cents on the average. That brings this up to about 60 cents into the city gates of Washington, D.C.

With the distribution cost of $1.25, that brings the total cost to about $1.85. If the cost is increased by 40 cents, going from 23 cents

to 63 cents, which is the market in our State, then the cost would go up from $1.85 to $2.25. But it would only be a very small amount, because it would be the new gas, under the Buckley amendment, and it would be rolled into the existing gas.

The point I am trying to make is that it would be supplemental to the existing gas, to the existing contract, but it would be considerably cheaper than the 10-percent increase that is going to be available to the citizens of Washington by the processing of naphtha, which will cost $1.50 a thousand at the city gate.

So it seems that it would be a more reliable source, because the naphtha undoubtedly would be imported; it would be a lower cost product, and one which would not involve an unfavorable balance-of-trade deficit. It would lead me to think that the purchaser would want to buy the gas within this country.

It seems to me that our choice is whether we are going to buy energy from domestic producers or whether we are going to buy it from foreign producers and increase their capabilities or increase our own.

Mr. HANSEN. I ask this of the Senator, at this point: One of the disturbing things, to me, in the bill before us is that we have a whole section that deals with windfall profits, with price fixing. The whole thrust of the proponents of this section, I believe, is intended to paint the picture that the oil industry wears a black hat, that its profits have far exceeded those of any other segment of American industry, that we have to have price fixing, that there is going to be gouging in everything, and that we can go ahead and solve our problems, as I said earlier, simply by passing this bill, failing completely, as the Senator from Oklahoma has pointed out, to recognize that we do not solve anything simply by spreading the misery around, simply by trying to make not enough do for more and more people. We have to get more supply going.

The incongruous aspect of the whole picture, when we talk about prices, is that we find the typical barrel of crude produced in this country selling for perhaps $4 or $5 per barrel. Is that about right?

Mr. BARTLETT. About $4.25.

Mr. HANSEN. I read in a newspaper a couple of days ago that a contract had been entered into, I believe with some Nigerian producers, for $17.40 a barrel. We have kept the price of natural gas down, so that there was no reason at all for the coal industry to try to do anything about gasification, liquefaction, or the development of the MHD process for generating electricity. At the same time, we are importing liquefied LNG, or have been, from Algeria, which is costing us all the way from $1.10 or $1.20 to as much as $1.50 or $1.60 per MCF. Are thsoe figures some place in the ballpark?

Mr. BARTLETT. Yes. Those are the estimates that are generally given. But I understand that Algeria has chosen not to deliver on some of those contracts.

Mr. HANSEN. I suppose they could very well.

Of course, that means one thing: There is going to be less and less to go around.

As the Senator from Maine pointed out in our conference last night, we can whistle around and take all the time we choose; but let us not

forget that if we do not take these steps now, if we do not institute some conservation measures immediately, when it is cold and when the sun has gone south, if we continue on without taking those steps which most people agree should be taken now, there will not be enough left to get us through the rest of the year in any fashion that will be acceptable to the average American.

We are going to be faced with cold homes, with schools closed. Some already are closing. I see that some of the colleges, particularly those in the northern part of the United States, have a longer Christmas vacation planned than would be normal. Public schools are going to be closed in greater and greater numbers. Factories will be closed. People will be out of jobs, which brings about, in the minds of some, the reasons for the provision in this bill that we will pay anybody for as much as 2 years of unemployment compensation if he is able to demonstrate—as I recall the language—that his employment was a direct result of any of these plans that have been implemented by government in trying to conserve energy.

So I am at a loss to know why those people who are such ardent advocates for the Government's taking some steps are so blinded to the supply side of the picture and are so insistent that we keep this provision in the bill. That is what we are talking about.

Mr. BARTLETT. Mr. President, will the Senator yield for a question?

Mr. HANSEN. I am glad to yield.

Mr. BARTLETT. Considerable evidence was presented to the Committee on Interior and Insular Affairs as to the additional amount of funds needed to develop our resources of oil and gas. What amounts are necessary, according to the Senator's best judgment, as to the amount required to have this Nation make big strides toward self-sufficiency?

Mr. HANSEN. The amount of capital?

Mr. BARTLETT. Yes.

Mr. HANSEN. The best answer I could give to that question would be simply to quote what the Chase Manhattan oil economists have concluded. They have been studying this problem. They have been keeping very close touch with the industry over the years. It is my understanding that John Winger and his associates—and I believe they are highly regarded not only nationally but also internationally as authorities in the field—have said that in order to have the degree of self-sufficiency they believe this Nation should have by 1985, it will be necessary for the industry to have at its disposal one trillion, 350 million dollars; and they go on to point out that the average rate of return to the industry has been around 8 percent.

If we were to make any appreciable progress at all, it would be necessary to at least double that rate of return, if we hope to have anything at all like the amount of capital necessary to drill the deeper wells, to explore our coastal waters, to institute secondary and tertiary recovery efforts, which, as the Senator well knows, can offer an immediate degree of relief. It would not be enough, but it can offer immediate help if we keep those stripper wells pumping that a few of our friends from the Northeast, a few years ago, were saying ought to be plugged and abandoned. They were criticizing the Nation's energy policy at that time by saying that we should forget about the oil indus-

try generally in the United States and go over to the Middle East, where it was low priced, abundant, and readily available. They said, "Let us buy it over there and we can bring it back in this country and save the consumers of America billions of dollars."

The RIO Oil Import Task Force study assured that this was costing the American consumer $5 billion a year. They said, "We will go over there and buy it, put a tax on it, and replenish the Treasury at the same time."

Mr. MANSFIELD. Does the Senator intend to maintain the floor all evening or does he intend to let others speak on the bill this evening?

Mr. HANSEN. Mr. President, I would be happy to respond to my esteemed friend, the majority leader, that it is my understanding that an effort is being made right now to reach an accord on what may be contained in this bill and what will be taken from it; and if that effort is successful, I would be hopeful, as quickly as there is a resolution of this issue, to yield the floor and be done with this matter.

In the meantime there are those who would seek to have other actions taken at this time that might prejudice that effort. So I must say it will be my purpose as long as I am able to hang onto the floor while there is hope that the negotiators can come up with a resolution of the matter.

Mr. MANSFIELD. May I say that I have been somewhat disturbed by the fact that emissaries from the White House have been close to the Senate all afternoon attempting to tell Senators, at least on this side, what kind of bill they want and what kind of bill they think we should pass.

After all, this is a government of co-equal branches under the Constitution. There may be proposals which Senators themselves have, without any outside interference, I assume by Mr. Ash, the Director of the Office of Management and Budget, a representative of Mr. Simon, or at least that is the information which has been conveyed to me.

If the Senate is going to be held hostage because of something which the White House wants and if Members are going to continue to hold the floor, as my good friend, the distinguished Senator from Wyoming and others have been doing this afternoon, I do not know why we have a Senate. If we cannot make up our minds, rightly or wrongly, then I think we ought to consider the abolition of the Senate as an institution.

The manager of the bill does have a proposal which he wishes to make. The distinguished chairman of the committee does have an alternate approach which some of us think should be brought before the Senate for consideration. The Senate may not buy it, but it is my belief that if we keep on conducting the charade which has marked the Senate all afternoon, we are going to end up with no bill at all or a bill which will have only a title, implicating the use of the word "energy." It would be meaningless and it will not be conducive to what the Interior Committee and the Senate as a whole endeavored to do some days ago.

So I would hope that while these negotiations are going on between some Republicans and the White House representatives that the Senate would be given the opportunity to consider proposals of its own.

This is a pretty sorry performance when we have to depend on

people from the White House meeting in the Vice President's room for the purpose of trying to tell us—trying to tell us—what kind of bill we should enact, and that bill to be dictated by them. It is a sorry day for the Senate when an event of that kind has gained the currency it has on this particular occasion and I say it with the deepest regret because of my high regard for the Senate as an institution.

Mr. HANSEN. I thank my good friend from Montana. Let me say that despite his anguish I would hope he would not give further consideration to the abolition of the Senate as an institution. I think it still has some very good years left, and despite my frustrations, having been on the losing side at times, when I reflect on the leadership of the Senator from Montana I have renewed faith and inspiration in the Senate as an institution.

Mr. MANSFIELD. I thank the Senator.

Mr. HUGH SCOTT. Mr. President, I would say that I would not want any misapprehension to exist here. We have all had. several times of several points, tried to work out a solution where the Senate could work responsibly, and send legislation to the House; and notwithstanding the problems in the other body—they appear to be very firm and up to now unyielding, at a time when we would hope for a greater spirit of compromise and conciliation. But the distinguished majority leader referred to Republicans.

Mr. MANSFIELD. Republicans meeting with White House representatives. The consultations which the distinguished Republican leader referred to previously happened to be between Democratic and Republican Senators only.

Mr. HUGH SCOTT. Yes. What was going on, I think it is fair to say, the distinguished chairman of the Committee on Finance (Mr. Long), and some Senators of the Committee on the Interior have been meeting with the distinguished chairman of that committee (Mr. Jackson). Some of the meetings are still going on.

I would not want it to appear that this is a party division within the Senate, because there are Members on both sides of the aisle who hold differing opinions on this.

What the leadership has been trying to do is to compromise those differences, and I believe if we go awhile longer we may be able to do that.

I have suggested instead of some 20 points of difference we confine ourselves to three or four. Some progress is being made on that right now. I hope we will have an answer on that in a very short time. It depends on the views of the Senators I mentioned, including the chairman of the Committee on Finance who quite rightly feels some measures in this bill should have been before the Committee on Finance, in a revenue measure.

Mr. MANSFIELD. Agreement has been reached on that aspect, **section 112.**

Mr. JACKSON. That is right. It is the section relating to windfall profits **[Sec. 110]**, which relates in turn to excess profits, which is a matter in the jurisdiction normally of the Ways and Means Committee and the Finance Committee.

Mr. HUGH SCOTT. I do not want to speak for the chairman of the Committee on Finance but I know he has been in consultation on that and the other point, and there are other revenue features in the bill.

But what is much more important is that the Senate shall do its job and pass some legislation and send it over to the other body, hopefully for passage.

Mr. MANSFIELD. I would agree with the distinguished Senator in that respect that we are being given no opportunity to act. Not only was that particular section which the Republican leader referred to agreed to for abolishment, but also the most serious consideration was being given to a bill which would expire on April 1. So there has been, among the Senators, and the Senators only, meetings which have arrived at tentative agreements—I think in the right direction. While I do not approve personally of some of these agreements, nevertheless they have been made by a sizable majority of those who met in session three times today for long periods of time.

Mr. HUGH SCOTT. I think we are getting near—at least they are getting near—an agreement since the majority leader and I have been acting more or less as mediators. There is, for example, the question whether or not Congress should have the right to veto, even retroactively, the right of the President during the recess to put a stop to gasoline sales on certain days. I think, if we are going to conserve energy, we ought at least give the President the authority by law, through his administrator, to stop gasoline sales and conserve energy.

There is a good deal of sentiment on this side that ought not to be in the bill. That is one of the things we are talking about, because if it stays in the bill, the other body can come back after the 21st of January and veto whatever the President did during the recess with relation to the conservation of energy, the lighting of commercial buildings, sales of gasoline. I myself think it would cause economic chaos in the country if it were done.

That is one of the present sticking points that we are trying to work out. I do not believe it is a simple matter. I myself have not seen the representatives from the White House the distinguished majority leader referred to a moment ago. After I went out of there I talked to him to see who was there.

Mr. HANSEN. Mr. President, if I could make an observation, let me say that during the conference on this energy bill I discerned no enthusiasm at all on the part of the conferees to assume the job that the administration would be called upon to perform. It seems not too unusual, then, that there would be representatives from the administration up here, because time after time after time in the 2 days and 2 long nights that we were trying to get together on this bill, no one—no one—wanted to spell out how we would go about achieving goals that would result in an equitable distribution of the energy we have in the country on the one hand and a fair treatment of people on the other—how we were going to ration, how we were going to conserve. There was no one there doing that.

I know it may be that oftentimes we see representatives from the administration here actually conferring with conferees and with the leadership, but I just have to observe to my good friend the majority leader that we asked several times—those of us on the conference—if those persons who wanted to have the right to veto any presidential action or any action taken by the energy czar, so-called, would like to take his job and spell it out in order not to have this hiatus existing

between now and 15 days after the 21st of January when we come back in session, recognizing, as the Senator from Maine did, that that is too late; that is not good enough.

He said—and it bears repeating—that if we do not do something between now and 15 days after the 21st of January we very well may have used up more fuel than we will be able to replace from any other source, and he earnestly pleaded with the conferees, the House and Senate Members, to recognize the interests of America and to cast aside politics, insofar as the position of one or the other body is concerned. And that motion had the support of all excepting one of the Senate conferees, including Republicans and Democrats alike.

So, with that background, I say to my good friend from Montana, it is not too surprising that there are representatives from the White House up here. If no one of us wanted to say what ought to be done, if no one of us had any specific ideas how to accomplish these objectives, how better could we get in mind what the administration believes it needs in the way of conservation efforts to bring about, without doing serious harm to this country, or to any of the people, a program that would result in our being able to muddle through?

Mr. MANSFIELD. I think I should point out that the Senator had administration witnesses before his committee when they were considering the bill which was proposed by the administration. I assume that the committee invited these people from the White House to participate in the hearings held by the conferees on the pending bill.

Mr. HANSEN. The Senator is quite right.

Mr. MANSFIELD. And that evidently has been a continuing invitation, because they have been up here every day, not as far as the conference was concerned, but when we are out of conference and considering it in the Senate, they are still carrying on their activities.

I think that the White House is too much involved in the affairs of the Senate, and I am not one of those who likes to see them come up here and tell us what to do or to help us in what we should endeavor, except on rare occasions.

I would point out, and I say this in all modesty, that I would allow no one from the White House under the Kennedy and Johnson administrations in my office to consider legislation except the regularly accredited, so to speak, liaison men for the Senate; and in those days we had good liaison men, and at the present time we have had extremely good liaison men in the persons of Ken Belieus and now Tom Korologos. That is enough. But as far as their emissaries are concerned, their duties are downtown at the other end of the avenue. Their duites are there, and ours are here.

I would hope the distinguished Senator from Wyoming, for whom I have great affection and respect, would consider the possibility of allowing the chairman of his committee to perhaps offer proposals that might get us off the impasse in which we find ourselves at the present time.

The item which the distinguished Senator was most interested in, however, has been agreed to. Both Republicans and Democrats also have reached tentative agreement, subject to confirmation, that a bill that ought to be passed should extend only to April 1.

Perhaps the minority leader can corroborate that.

Mr. HUGH SCOTT. That is what we have been discussing, and there is currently going on an effort to work out a measure. There is currently going on between the chairman of the committee and the chairman of the Finance Committee some discussion. We could have a quorum call, perhaps. I believe the areas of disagreement have been substantially narrowed. If I can tell from this distance, the amount of paper seems to be smaller and shorter, and I believe we are getting closer and closer all the time.

I do say for the interest of the White House that it does exhibit their very great concern in the energy crisis. We have often complained about the lack of communication. At the moment we seem to have all the communication we need, and obviously more than the distinguished majority leader feels to be necessary.

Mr. MANSFIELD. With Tom Korologos, whom else do they need?

Mr. JACKSON. Mr. President, if I may——

Mr. HUGH SCOTT. Mr. President, I understand we have an agreement, so I will, therefore, happily yield the floor.

The PRESIDING OFFICER. Permit the Chair to remind that the Senator from Wyoming——

Mr. JACKSON. Mr. President, he has the floor. I ask unanimous consent that I may proceed for a moment with the understanding that he will not lose his right to the floor, and I will not make any motion on his time.

Mr. HANSEN. No commotion either, is that correct?

Mr. JACKSON. I cannot guarantee that.

Mr. President, I should like to comment to the majority leader that we did something that was unique in connection with a markup of this bill, which was done in the open on the Senate side. Mr. President, we had representatives of the White House present to participate in the markup. And they participated all the way through. They made their proposals. We gave them a chance to present them. We either accepted or rejected them. This was an open markup session. The press and everyone had a chance to observe what went on.

When we passed the bill in the Senate, it went to the House. There were a great many changes to the bill there. I did not hear anything from the White House, very candidly, until the closing hours of the conference. I was never advised of their objections to the Senate-passed bill. I was not advised about the objections, frankly, to the action taken by the House. I did not agree with a lot of things that the House did. However, I had no indication at all until the closing hours of the conference about the various objections on the part of the White House.

Mr. President, we try to be reasonable around here. I think the White House has become overactive in the late hours, and it really did not pay much attention to what was going on up here until the closing hours of the Congress.

Mr. President, I am willing—not because I want to, but because I am a realist—to make some adjustments. I know and every one knows who is familiar with what is going on in this body right now that if we continue to discuss the pending conference report, we will be talking here through Christmas and on into New Year's, and we will not have a conference report.

We have done our part in bringing the conference report to the Senate. I think it is the best that we could do.

Mr. President, I am prepared to offer a motion to table the conference report which I shall vote against. However, I think we ought to have an expression of the Senate on it. After that has been acted upon, and I hope rejected, I will ask the majority leader to call up an appropriate House-passed bill, and I will then offer a compromise which I hope the Senate will accept and which I hope the House will accept.

It is not what I would like to do. However, I recognize, and we all recognize, that we do face an emergency. We do want to give whatever authority is necessary to the Administrator to do the conservation job and a few other things like oil conversion to coal, as soon as possible.

It is in that spirit that I shall make this compromise proposal which may be supported by the distinguished Senator from Arizona. And I would hope that we could proceed along this line as soon as possible.

Mr. GRIFFIN. Mr. President, the Senator said that he would make a motion to table which he would vote against. I can understand why he would vote against it in his position. However, if the rest of us were to vote for the tabling motion, we would not be able to take up the other bill.

Mr. JACKSON. Mr. President, we can set it aside temporarily and call up the other bill.

This represents the consensus of the House and the Senate. And the only reason that we cannot vote on it is because we have an extended discussion going on which it appears may be extended into Christmas Day and beyond.

Mr. GRIFFIN. The Senator could make a motion to temporarily lay aside the conference report and take up the other bill.

Mr. JACKSON. Mr. President, I want the Senate to have an opportunity to vote on it. That should be a condition precedent to taking the alternate course. That, I think, is the only sensible thing to do under the circumstances.

Mr. HANSEN. Mr. President, I yield to the Senator from Arizona without losing my right to the floor.

Mr. FANNIN. Mr. President, I feel it is just an exercise in futility to go through the process of tabling the conference report when it is not being done for an objective that is other than what the distinguished Senator from Washington stated. I feel that we can agree upon language, and we have discussed it very thoroughly. I certainly commend the distinguished Senator from Washington for his willingness to compromise and adopt language that will help the American people with this emergency.

We do have a very serious problem before us. We have a time problem that certainly, we know, is as serious as anything that has happened throughout this year.

So, I would plead with the distinguished Senator from Washington that we go ahead and have an understanding on what will be done and dispense with any vote as far as the conference report is concerned, because we do not feel that it would be in order at this time if we are going to take other action.

I cannot see what would be gained by having that vote. I would hope that he would dispense with his request to have that vote.

Mr. JACKSON. Mr. President, I think the public has a right to know that on a substantial vote, the Senate would act favorably on the conference report. It is only because we do not have our chance to work our will at this late hour that I will offer an alternative course of action.

Mr. LONG. Mr. President, I would like to say that I have great reluctance in voting for any motion that the mover cannot support himself. He said that he cannot vote for it. If the Senator wants to do something else, I might be willing to vote for it. However, if the Senator will not vote for his own motion, I do not think I will either.

Mr. HANSEN. Mr. President, let me say that it is my understanding that a new proposition has been worked out that has considerable support.

I would like to provide the distinguished chairman of the Committee on Interior and Insular Affairs and the floor manager of the bill an opportunity to examine and to discuss this new proposal with his counterpart, who has been actively participating with him, along with the chairman of the Finance Committee, to see if we can agree upon some new criteria they have just been developing.

It just happens that I have a few other things to say. I could continue to speak while they are looking at this proposal. It is not a lengthy one. It is reasonable. I think it includes all of the necessary elements that the White House needs in order to implement the kind of action that will result in some very positive, forward movement toward resolving this energy crisis as best we can within the parameters of the factors that are present.

So, if the distinguished chairman of the committee would like to get together with the others with whom he has been working, I would be very happy to continue with some exceedingly relevant and pertinent observations that address the energy crisis.

And that is what I now propose to do, Mr. President, with the understanding that the proposal to be made by the distinguished Senator from Washington (Mr. Jackson) has been agreed to by the chairman of the committee, the minority leader, and the ranking minority member of the Committee on Interior and Insular Affairs. Without losing my right to the floor, I am happy to yield to my good friend, the Senator from Washington.

Mr. JACKSON. Mr. President, what I want to do is get the vote on the motion to table, which I shall vote against, though it is my own motion, and make the record on that. In the meantime, while we are having the rollcall, I hope we can go over what I understand is to be a series of changes that are not much beyond what we had discussed earlier in conference, and which should be agreeable.

Mr. President, if these stipulations are agreeable, then I shall be prepared to offer the amendment to one of the House passed bills.

Mr. HUGH SCOTT. I will say it is my intention to vote against the motion, and I hope that all Senators will vote against it. I would hope it would be a voice vote, because it is the only way I know to expedite the proceedings, to take some action which will ease the other body.

Mr. JACKSON. Mr. President, I think a rollcall vote is essential in dealing with the problem on the other side. I think we ought to make a record that we have no other alternative, if we are going to finish before Christmas, before New Year's, or before January 21, to taking

the alternate course of action that I shall, after the vote on the motion to table, propose.

Mr. HANSEN. Mr. President, may I say it seems as though the distinguished Senator from Washington may be laying down some stipulations that are not agreed to by the persons whose concurrence I had asked for.

I see no reason, with the tenor as I sense it here, that there will be anyone voting for this motion to table, and I see no reason to have a rollcall vote. If there is any doubt about it, let us have a division; let those stand who want to table and then let those stand who do not want to table. On the stipulation that we have a voice vote or a division only, I am willing to permit the offering of the resolution as just suggested by the Senator from Washington.

Mr. JACKSON. Mr. President, I am sorry. I do not know why any Senator should object to going on record to vote. The discussion here makes no sense. Let us go on record, and then we will talk, and during the period of the calling of the roll, I think between the ranking minority member and myself we will have worked out this matter. We will need that much time anyway; what harm is there to being on record?

Mr. HANSEN. Mr. President, I am happy to withdraw my objection.

Mr. JACKSON. Mr. President, I move to lay the conference report on the table, and I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. Hart). Does the Senator from Wyoming yield for the purpose of making this motion?

Mr. HANSEN. I yield, with the understanding that I do not lose my right to the floor after the vote has been taken.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. Hart). The question is on agreeing to the motion to lay the conference report on the table. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. Bentsen), the Senator from Nevada (Mr. Cannon), the Senator from Idaho (Mr. Church), the Senator from Missouri (Mr. Eagleton), the Senator from Mississippi (Mr. Eastland), the Senator from North Carolina (Mr. Ervin), the Senator from Alaska (Mr. Gravel), the Senator from Colorado (Mr. Haskell), the Senator from South Carolina (Mr. Hollings), the Senator from Minnesota (Mr. Humphrey), the Senator from Hawaii (Mr. Inouye), the Senator from Utah (Mr. Moss), the Senator from Rhode Island (Mr. Pastore), the Senator from Georgia (Mr. Talmadge), the Senator from South Dakota (Mr. Abourezk), and the Senator from Missouri (Mr. Symington), are necessarily absent.

I further announce that if present and voting, the Senator from Rhode Island (Mr. Pastore), the Senator from Minnesota (Mr. Humphrey), and the Senator from Nevada (Mr. Cannon) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. Cotton) is absent because of illness in his family.

The Senators from Vermont (Mr. Aiken and Mr. Stafford), the Senator from Oklahoma (Mr. Bellmon), the Senator from Utah (Mr. Bennett), the Senator from Tennessee (Mr. Brock), the Senator from

Massachusetts (Mr. Brooke), the Senator from New York (Mr. Buckley), the Senator from Hawaii (Mr. Fong), the Senator from Arizona (Mr. Goldwater), the Senator from Florida (Mr. Gurney), the Senator from Oregon (Mr. Hatfield), the Senator from North Carolina (Mr. Helms), the Senator from Idaho (Mr. McClure), the Senator from Kansas (Mr. Pearson), the Senator from Illinois (Mr. Percy), the Senators from Ohio (Mr. Saxbe and Mr. Taft), and the Senator from Texas (Mr. Tower) are necessarily absent.

Also, the Senator from New Mexico (Mr. Domenici), the Senator from Colorado (Mr. Dominick), the Senator from New York (Mr. Javits), the Senator from Delaware (Mr. Roth), and the Senator from Alaska (Mr. Stevens) are necessarily absent.

The result was announced—yeas 0, nays 60, as follows:

[No. 619 Leg.]

YEAS—0

NAYS—60

Allen	Hansen	Muskie
Baker	Hart	Nelson
Bartlett	Hartke	Nunn
Bayh	Hathaway	Packwood
Beall	Hruska	Pell
Bible	Huddleston	Proxmire
Biden	Hughes	Randolph
Burdick	Jackson	Ribicoff
Byrd, Harry F., Jr.	Johnston	Schweiker
Byrd, Robert C.	Kennedy	Scott, Hugh
Case	Long	Scott, William L.
Chiles	McClellan	Sparkman
Clark	McGee	Stennis
Cook	McGovern	Stevenson
Cranston	McIntyre	Thurmond
Curtis	Magnuson	Tunney
Dole	Mansfield	Weicker
Fannin	Mathias	Williams
Fulbright	Metcalf	Young
Griffin	Mondale	
	Montoya	

NOT VOTING—40

Abourezk	Eastland	Moss
Aiken	Ervin	Pastore
Bellmon	Fong	Pearson
Bennett	Goldwater	Percy
Bentsen	Gravel	Roth
Brock	Gurney	Saxbe
Brooke	Haskell	Stafford
Buckley	Hatfield	Stevens
Cannon	Helms	Symington
Church	Hollings	Taft
Cotton	Humphrey	Talmadge
Domenici	Inouye	Tower
Dominick	Javits	
Eagleton	McClure	

So Mr. Jackson's motion to lay the conference report on the table was rejected.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. HANSEN. I yield, without losing my right to the floor.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

Mr. HANSEN. Without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. HANSEN. I yield.

AMENDMENT OF WILD AND SCENIC RIVERS ACT; S. 921

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 921.

The Presiding Officer (Mr. Williams) laid before the Senate the amendment of the House of Representatives to the bill (S. 921) to amend the Wild and Scenic Rivers Act, which was to strike out all after the enacting clause, and insert:

That the Wild and Scenic Rivers Act (82 Stat. 906), as amended (16 U.S.C. 1271–1287), is further amended as follows:

(a) Section 7(b)(i) is amended by:

(i) deleting "five-year" and inserting in lieu thereof "ten-year".

(ii) deleting "publish" and inserting in lieu thereof "notify the Committees on Interior and Insular Affairs of the United States House of Representatives and United States Senate in writing, including a copy of the study upon which his determination was made, at least one hundred and eighty days while Congress is in session, prior to publishing".

(b) Section 15(c) is amended by deleting "scenic view from the river," and inserting in lieu thereof "scenic and natural qualities of a designated wild, scenic, or recreational river area.".

(c) Section 16 is amended as follows:

(i) delete "$17,000,000" and insert "$37,600,000".

(ii) redesignate "SEC. 16." as "SEC. 16 (a)" and insert "(b) The authority to make the appropriations authorized in this section shall expire on June 30, 1978".

Mr. JACKSON. Mr. President, I move that the Senate concur in the House amendment with an amendment which I now send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. JACKSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the Record.

The amendment is as follows:

At the end of the matter proposed to be inserted by the House add a new title I, title II, and title III as follows:

TITLE I—ENERGY EMERGENCY AUTHORITIES

SEC. 101. FINDINGS AND PURPOSES.

(a)(1) The Congress hereby determines that—

(A) shortages of crude oil, residual fuel oil, and refined petroleum products caused by insufficient domestic refining capacity, inadequate domestic produc-

tion, environmental constraints, and the unavailability of imports sufficient to satisfy domestic demand, now exist;

(B) such shortages have created or will create severe economic dislocations and hardships;

(C) such shortages and dislocations jeopardize the normal flow of interstate and foreign commerce and constitute an energy emergency which can be averted or minimized most efficiently and effectively through prompt action by the executive branch of Government;

(D) disruptions in the availability of imported energy supplies, particularly crude oil and petroleum products, pose a serious risk to national security, economic well-being, and health and welfare of the American people;

(E) because of the diversity of conditions, climate, and available fuel mix in different areas of the Nation, a primary governmental responsibility for developing and enforcing, energy emergency lies with the States and with the local governments of major metropolitan areas acting in accord with the provisions of this Act; and

(F) the protection and fostering of competition and the preventions of anticompetitive practices and effects are vital during the energy emergency.

(2) On the basis of the determinations specified in subparagraphs (A) through (F) of paragraph (1) of this subsection, the Congress hereby finds that current and imminent fuel shortages have created a nationwide energy emergency.

(b) The purposes of this Act are to call for proposals for energy emergency rationing and conservation measures and to authorize specific temporary emergency actions to be exercised, subject to congressional review and right of approval or disapproval, to assure that the essential needs of the United States for fuels will be met in a manner which, to the fullest extent practicable: (1) is consistent with existing national commitments to protect and improve the environment; (2) minimizes any adverse impact on employment; (3) provides for equitable treatment of all sectors of the economy; (4) maintains vital services necessary to health, safety, and public welfare, and (5) insures against anticompetitive practices and effects and preserves, enhances, and facilitates competition in the development, production, transportation, distribution, and marketing of energy resources.

SEC. 102. DEFINITIONS.

For purposes of this Act:

(1) The term "State" means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

(2) The term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (as defined in the Emergency Petroleum Allocation Act of 1973).

(3) The term "United States" when used in the geographical sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(4) The term "Administrator" means the Administrator of the Federal Energy Emergency Administration.

SEC. 103. FEDERAL ENERGY EMERGENCY ADMINISTRATION.

(a) There is hereby established until May 15, 1975, unless superseded prior to that date by law, a Federal Energy Emergency Administration which shall be temporary and shall be headed by a Federal Energy Emergency Administrator, who will be appointed by the President, by and with the advice and consent of the Senate. Vacancies in the office of Administrator shall be filled in the same manner as the original appointment.

(b) The Administrator shall be compensated at the rate provided for level II of the Executive Schedule. Subject to the Civil Service and Classification provisions of title 5, United States Code, the Administrator may employ such personnel as he deems necessary to carry out his functions.

(c) Effective on the date on which the Administrator first takes office (or, if later, on January 1, 1974), all functions powers, and duties of the President under sections 4, 5, 6, and 9 of the Emergency Petroleum Allocation Act of 1973 (as amended by this Act), and of any officer, department, agency, or State (or officer thereof) under such sections (other than functions vested by section 6 of such Act in the Federal Trade Commission, the Attorney General, or the Antitrust Division of the Department of Justice), are transferred to the Administrator. All personnel, property, records, obligations, and commitments used pri-

marily with respect to functions transferred under the preceding sentence shall be transferred to the Administrator.

SEC. 104. END-USE RATIONING.

Section 4 of the Emergency Petroleum Allocation Act of 1973 is amended by adding at the end thereof the following new subsection:

"(h)(1) The President may promulgate a rule which shall be deemed a part of the regulation under subsection (a) and which shall provide, consistent with the objectives of subsection (b), for the establishment of a program for the rationing and ordering of priorities among classes of end-users of crude oil, residual fuel oil, or any refined petroleum product, and for the assignment to end-users of such products of rights, and evidence of such rights, entitling them to obtain such products in precedence to other classes of end-users not similarly entitled.

"(2) The rule under this subsection shall take effect only if the President finds that, without such rule, all other practicable and authorized methods to limit energy demand will not achieve the objectives of section 4(b) of this Act and of the Energy Emergency Act.

"(3) The President shall, by order, in furtherance of the rule authorized pursuant to paragraph (1) of this subsection and consistent with the attainment of the objectives in subsection (b) of this section, cause such adjustments in the allocations made pursuant to the regulation under subsection (a) as may be necessary to carry out the purposes of this subsection.

"(4) The President shall provide for procedures by which any end-user of crude oil, residual fuel oil or refined petroleum products for which priorities and entitlements are established under paragraph (1) of this subsection may petition for review and reclassification or modification of any determination made under such paragraph with respect to his rationing priority or entitlement. Such procedures may include procedures with respect to such local boards as may be authorized to carry out functions under this subsection pursuant to section 122 of the Energy Emergency Act.

"(5) No rule or order under this section may impose any tax or user fee, or provide for a credit or deduction in computing any tax.

"(6) No rule prescribed under this subsection (h) may remain in effect after April 1, 1974."

SEC. 105. ENERGY CONSERVATION PLANS.

(a)(1)(A) Pursuant to the provisions of this section, the Administrator is authorized to promulgate by regulation one or more energy conservation plans in accord with this section which shall be designed (together with actions taken and proposed to be taken under other authority of this or other Acts) to result in a reduction of energy consumption to a level which can be supplied by available energy resources. For purposes of this section, the term "energy conservation plan" means a plan for transportation controls (including but not limited to highway speed limits) or such other reasonable restrictions on the public or private use of energy (including limitations on energy consumption of businesses) which are necessary to reduce energy consumption and which are authorized by this Act.

(B) No energy conservation plan promulgated by regulation under this section may impose rationing or any tax or user fee, or provide for a credit or deduction in computing any tax.

(2) An energy conservation plan shall become effective as provided for in subsection (b). Such a plan shall apply in each State, except as otherwise provided in an exemption granted pursuant to the plan in cases where a comparable State or local program is in effect, or where the Administrator finds special circumstances exist.

(3) An energy conservation plan may not deal with more than one logically consistent subject matter.

(4) An amendment to an energy conservation plan, if it has significant substantive effect, shall be transmitted to Congress and shall be effective only in accordance with subsection (b). Any amendment which does not have significant substantive effect and any recession of a plan may be made effective in accordance with section 553 of title 5, United States Code.

(5) Subject to subsection (b)(3), provision of an energy conservation plan shall remain in effect for a period specified in the plan unless earlier rescinded by the Administrator, but shall terminate in any event no later than April 1, 1974.

(b)(1) For purposes of this subsection, the term "energy conservation plan" means a plan promulgated by a regulation proposed under subsection (a) of this section or an amendment thereto which has significant substantive effect.

(2) The Administrator shall transmit any energy conservation plan (bearing an identification number) to each House of Congress on the date on which it is promulgated.

(3)(A) If an energy conservation plan is transmitted to Congress before March 1, 1974, and provides for an effective date earlier than March 1, 1974, such plan shall take effect on the date provided in the plan; but if either House of the Congress, before the end of the first period of 15 calendar days of continuous session of Congress after the date on which such plan is transmitted to it, passes a resolution stating in substance that such House does not favor such plan, such plan shall cease to be effective on the date of passage of such resolution.

(B) If an energy conservation plan is transmitted to the Congress and provides for an effective date on or after March 1, 1974 and before April 1, 1974, such action shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which such plan is transmitted to it unless, between the date of transmittal and the end of the 15-day period, either House passes a resolution stating in substance that such House does not favor such plan.

(C) An energy conservation plan proposed to be made effective on or after April 1, 1974, shall take effect only if approved by Act of Congress.

(4) For the purpose of paragraph (3) of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the 15-day period.

(5) Under provisions contained in an energy conservation plan, a provision of the plan may take effect at a time later than the date on which such plan otherwise is effective.

(c)(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(2) For the purpose of this subsection, "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the ———— does not favor the energy conservation plan numbered ———— transmitted to Congress by the Administrator of the Federal Energy Emergency Administration on ————, 19——." the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one energy conservation plan.

(3) A resolution with respect to an energy conservation plan shall be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to an energy conservation plan has been referred has not reported it at the end of 5 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to such energy conservation plan which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same energy conservation plan), and debate thereon shall be limited to not more than 1 hour, to be divided

equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) If the motion, to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same plan.

(5) (A) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to an energy conservation plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(6) (A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution with respect to an energy conservation plan, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to an energy conservation plan shall be decided without debate.

(d) (1) In carrying out the provisions of this Act, the Administrator shall, to the greatest extent practicable, evaluate the potential economic impacts of proposed regulatory and other actions including but not limited to the preparation of an analysis of the effect of such actions on—

(A) the fiscal integrity of State and local government;

(B) vital industrial sectors of the economy;

(C) employment, by industrial and trade sector, as well as on a national, regional, State, and local basis;

(D) the economic vitality of regional, State, and local areas;

(E) the availability and price of consumer goods and services;

(F) the gross national product;

(G) competition in all sectors of industry; and

(H) small business.

(2) The Administrator shall develop analyses of the economic impact of any energy conservation plan on States or significant sectors thereof, considering the impact on energy resources as fuel and as feedstock for industry.

(3) Such analyses shall, wherever possible, be made explicit and, to the extent practicable, other Federal agencies and agencies of State and local governments which have special knowledge and expertise relevant to the impact of proposed regulatory or other actions shall be consulted in making the analyses, and all Federal agencies shall cooperate with the Administrator in preparing such analyses, except that the Administrator's actions pursuant to this subsection shall not create any right of review or cause of action except as otherwise exist under other provisions of law.

(4) The Administrator, together with the Secretaries of Labor and Commerce, shall monitor the economic impact of any energy actions taken by the Administrator, and shall provide the Congress with separate reports every thirty days on the impact of the energy shortage and such emergency actions on employment and the economy.

(e) Any energy conservation plan which the Administrator submits to the Congress pursuant to subsection (b) of this section shall include findings of fact and a specific statement explaining the rationale for each provision contained in such plan.

SEC. 106. COAL CONVERSION AND ALLOCATION.

(a) The Administrator shall, to the extent practicable and consistent with the objectives of this Act, by order, after balancing on a plant-by-plant basis the environmental effects of use of coal against the need to fulfill the purposes of this Act, prohibit, as its primary energy source, the burning of natural gas or

petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this Act, has the capability and necessary plant equipment to burn coal. Any installation to which such an order applies shall be permitted to continue to use coal as provided in section 119(b) of the Clean Air Act. To the extent coal supplies are limited to less than the aggregate amount of coal supplies which may be necessary to satisfy the requirements of those installations which can be expected to use coal (including installations to which orders may apply under this subsection), the administrator shall prohibit the use of natural gas and petroleum products for those installations where the use of coal will have the least adverse environmental impact. A prohibition on use of natural gas and petroleum products under this subsection shall be contingent upon the availability of coal, coal transportation facilities, and the maintenance of reliability of service in a given service area. The Administrator shall require that fossil-fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable of using coal as a primary energy source instead of or in addition to other fossil fuels. No fossil-fuel-fired electric powerplant may be required under this section to be so designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) if an adequate and reliable supply of coal is not available and is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

(b) The Administrator may by rule prescribe a system for allocation of coal to users thereof in order to attain the objectives specified in this section.

SEC. 107. MATERIALS ALLOCATION.

(a) The Administrator shall, within 30 days after the date of enactment of this Act, propose (in the nature of a proposed rule affording an opportunity for the presentation of views) and publish (and may from time to time amend) a contingency plan for allocation of supplies of materials and equipment necessary for exploration, production, refining, and required transportation of energy supplies and for the construction and maintenance of energy facilities. At such time as he finds that it is necessary to put all or part of the plan into effect, he shall transmit such plan or portion thereof to each House of Congress and such plan or portion thereof shall take effect in the same manner as an energy conservation plan prescribed under section 105 and to which section 105(b)(3)(B) applies, except that such plan may be submitted at any time after the date of enactment of thhis Act and before April 1, 1974.

(b) Section 4(b)(1)(G) of the Emergency Petroleum Allocation Act of 1973 is amended to read as follows:

"(G) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of exploration for, and production or extraction of—

"(i) fuels, and

"(ii) minerals essential to the requirements of the United States,

and for required transportation related thereto,"

SEC. 108. FEDERAL ACTIONS TO INCREASE AVAILABLE DOMESTIC PETROLEUM SUPPLIES.

(a) The Administrator may initiate the following measures to supplement domestic energy supplies for the duration of the emergency:

(1) require, by order or rule, the production of designated existing domestic oilfields, at their maximum efficient rate of production, which is the maximum rate which production may be sustained without detriment to the ultimate recovery of oil and gas under sound engineering and economic principles. Such fields are to be designated by the Secretary of the Interior, after consultation with the appropriate State regulatory agency. Data to determine the maximum efficient rate of production shall be supplied to the Secretary of the Interior by the State regulatory agency which determines the maximum efficient rate of production and by the operators who have drilled wells in, or are producing oil and gas from such fields;

(2) require, if necessary to meet essential energy needs, production of certain designated existing domestic oilfields at rates in excess of their currently assigned maximum efficient rates. Fields to be so designated, by the Secretary of the Interior or the Secretary of the Navy as to the Federal lands or as to Federal interests in lands under their respective jurisdiction, shall be those fields where the types and quality of reservoirs are such as to permit production at rates in excess of the currently assigned sustainable maximum efficient rate for periods of ninety days or more without excessive risk of losses in recovery;

(3) require the adjustment of processing operations of domestic refineries to produce refined products in proportion commensurate with national needs and consistent with the objectives of section 4(b) of the Emergency Petroleum Allocation Act of 1973.

(b) Nothing in this section shall be construed to authorize the production of any Naval Petroleum Reserve now subject to the provisions of chapter 641 of title 10 of the United States Code.

SEC. 109. OTHER AMENDMENTS TO THE EMERGENCY PETROLEUM ALLOCATION ACT OF 1973.

(a) Section 4 of the Emergency Petroleum Allocation Act of 1973 as amended by section 104 of this Act is amended by adding at the end of such section the following new subsection:

"(i) If any provision of the regulation under subsection (a) provides that any allocation of residual fuel oil refined petroleum products is to be based on use of such a product or amounts of such product supplied during a historical period, the regulation shall contain provisions designed to assure that the historical period can be adjusted (other adjustments in allocations can be made) in order to reflect regional disparities in use, population growth or unusual factors influencing use (including unusual changes in climatic conditions), of such oil or the product in the historical period. This subsection shall take effect 30 days after the date of enactment of the Energy Emergency Act. Adjustments for such purposes shall take effect no later than 6 months after the date of enactment of this subsection. Adjustments to reflect population growth shall be based upon the most current figures available from the United States Bureau of the Census."

(b) Section 4(g)(1) of the Emergency Petroleum Allocation Act of 1973 is amended by striking out "February 28, 1975" in each case the term appears and inserting in each case "May 15, 1975".

SEC. 110. IMPORTATION OF LIQUEFIED NATURAL GAS.

The Emergency Petroleum Allocation Act of 1973 is amended by adding at the end thereof the following new section:

"SEC. 8. Notwithstanding the provisions of section 3 of the Natural Gas Act (or any other provisions of law) the President may by order, on a finding that such action would be consistent to the public interest, authorize on a shipment-by-shipment basis the importation of liquefied natural gas from a foreign country: *Provided, however,* That the authority to act under this section shall not permit the importation of liquefied natural gas which had not been authorized prior to the date of expiration of this Act and which is in transit on such date."

SEC. 111. PROTECTION OF FRANCHISED DEALERS.

(a) As used in this section:

(1) The term "distributor" means a person engaged in the sale, consignment, or distribution of petroleum products to wholesale or retail outlets whether or not it owns, leases, or in any way controls such outlets.

(2) The term "franchise" means any agreement or contract between a refiner or a distributor and a retailer or between a refiner and a distributor, under which such retailer or distributor is granted authority to use a trademark, trade name, service mark or other identifying symbol or name owned by such refiner or distributor, or any agreement or contract between such parties under which such retailer or distributor is granted authority to occupy premises owned, leased, or in any way controlled by a party to such agreement or contract, for the purpose of engaging in the distribution or sale of petroleum products for purposes other than resale.

(3) The term "notice of intent" means a written statement of the alleged facts which, if true, constitute a violation of subsection (b) this section.

(4) The term "refiner" means a person engaged in the refining or importing of petroleum products.

(5) The term "retailer" means a person engaged in the sale of any refined petroleum product for purposes other than resale within any State, either under a franchise or independent of any franchise, or who was so engaged at any time after the start of the base period.

(b)(1) A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless he furnishes prior notification pursuant to this paragraph to each distributor or retailer affected thereby. Such notification shall be in writing and sent to such distributor or retailer by certified mail not less than ninety days prior to the date on which such franchise will be canceled, not renewed, or otherwise terminated. Such notification shall contain a statement of intention to cancel, not renew, or to terminate together with the reasons therefor, the date on which such action shall take effect, and a statement of the remedy or remedies available to such distributor or retailer under this section together with a summary of the applicable provisions of this section.

(2) A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless the retailer or distributor whose franchise is terminated failed to comply substantially with any essential and reasonable requirement of such franchise or failed to act in good faith in carrying out the terms of such franchise, or unless such refiner or distributor withdraws entirely from the sale of refined petroleum products in commerce for sale other than resale in the United States.

(c)(1) If a refiner or distributor engages in conduct prohibited under subsection (b) of this section, a retailer or a distributor may maintain a suit against such refiner or distributor. A retailer may maintain such suit against a distributor or a refiner whose actions affect commerce and whose products with respect to conduct prohibited under paragraph (1) or (2) of subsection (b) of this section, he sells or has sold, directly or indirectly, under a franchise. A distributor may maintain such suit against a refiner whose actions affect commerce and whose products he purchases or has purchased or whose products he distributes or has distributed to retailers.

(2) The court shall grant such equitable relief as is necessary to remedy the effects of conduct prohibited under subsection (b) of this section which it finds to exist including declaratory judgment and mandatory or prohibitive injunctive relief. The court may grant interim equitable relief, and actual and punitive damages (except for actions for a failure to renew) where indicated, in suits under this section, and may, unless such suit is frivolous, direct that costs, including reasonable attorney and expert witness fees, be paid by the defendant. In the case of actions for a failure to renew damages shall be limited to actual damages including the value of the dealer's equity.

(3) A suit under this section may be brought in the district court of the United States for any judicial district in which the distributor or the refiner against whom such suit is maintained resides, is found, or is doing business, without regard to the amount in controversy. No such suit shall be maintained unless commenced within three years after the cancellation, failure to renew, or termination of such franchise or the modification thereof.

SEC. 112. PROHIBITIONS ON UNREASONABLE ACTIONS.

(a) Action taken under authority of this Act, the Emergency Petroleum Allocation Act of 1973, or other Federal law resulting in the allocation of petroleum products and electrical energy among classes of users or resulting in restrictions on use of petroleum products and electrical energy, shall be equitable, shall not be abitrary or capricious, and shall not unreasonably discriminate among classes of users: *Provided*, That with respect to allocations of petroleum products applicable to the foreign trade and commerce of the United States, no foreign corporation or entity shall receive more favorable treatment in the allocation of petroleum products than that which is accorded by its home country to United States citizens engaged in the same line of commerce, and allocations shall contain provisions designed to foster reciprocal and non-discriminatory treatment by foreign countries of United States citizens engaged in foreign commerce.

(b) To the maximum extent practicable, any restriction on the use of energy shall be designed to be carried out in such manner so as to be fair and to create a reasonable distribution of the burden of such restriction on all sectors of the economy, without imposing an unreasonably disproportionate share of such burden on any specific industry, business or commercial enterprise, or on any individual segment thereof and shall give due consideration to the needs of commercial, retail, and service establishments whose normal function is to supply

goods and services of an essential convenience nature during times of day other than conventional daytime working hours.

SEC. 113. REGULATED CARRIERS.

(a) The Interstate Commerce Commission (with respect to common or contract carriers subject to economic regulation under the Interstate Commerce Act), the Civil Aeronautics Board, and the Federal Maritime Commission shall, for the duration of the period beginning on the date of enactment of this Act and ending on April 1, 1974, have authority to take any action for the purpose of a conserving energy consumption in a manner found by such Commission or Board to be consistent with the objectives and purposes of the Acts administered by such Commission or Board on its own motion or on the petition of the Administrator which existing law permits such Commission or Board to take upon the motion or petition of any regulated common or contract carrier or other person.

(b) The Interstate Commerce Commission shall, by expedited proceedings, adopt appropriate rules under the Interstate Commerce Act which eliminate restrictions on the operating authority of any motor common carrier of property which require excessive travel between points with respect to which such motor common carrier has regularly performed service—under authority issued by the Commission. Such rules shall assure continuation of essential service to communities served by any such motor common carrier.

(c) Within 4 days after the date of enactment of this Act, the Civil Aeronautics Board, the Federal Maritime Commission, and the Interstate Commerce Commission shall report separately to the appropriate committees of the Congress on the need for additional regulatory authority in order to conserve fuel during the period beginning on the date of enactment of this Act and ending on May 15, 1975 while continuing to provide for the public convenience and necessity. Each such report shall identify with specificity—

(1) the type of regulatory authority needed;

(2) the reasons why such authority is needed;

(3) the probable impact on fuel conservation of such authority;

(4) the probable effect on the public convenience and necessity of such authority; and

(5) the competitive impact, if any, of such authority.

Each such report shall further make recommendations with respect to changes in any existing fuel allocation programs which are deemed necessary to provide for the public convenience and necessity during such period.

SEC. 114. ANTITRUST PROVISIONS.

(a) Except as specifically provided in subsection (i), no provision of this Act shall be deemed to convey to any person subject to this Act any immunity from civil and criminal liability or to create defenses to actions, under the antitrust laws.

(b) As used in this section, the term "antitrust laws" means—

(1) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(4) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(c)(1) To achieve the purposes of this Act, the Administrator may provide for the establishment of such advisory committees as he determines are necessary. Any such advisory committees shall be subject to the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. App. 1), whether or not such Act or any of its provisions expires or terminates during the term of this Act or of such committees, and in all cases shall be chaired by a regular full-time Federal employee and shall include representatives of the public. The meeting of such committees shall be open to the public.

(2) A representative of the Federal Government shall be in attendance at all meetings of any advisory committee established pursuant to this section. The

Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(3) A full and complete verbatim transcript shall be kept of all advisory committee meetings, and shall be taken and deposited together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of sections 552(b)(1) and (b)(3) of title 5, United States Code.

(d) The Administrator, subject to the approval of the Attorney General and the Federal Trade Commission, shall promulgate, by rule, standards and procedures by which persons engaged in the business of producing, refining, marketing, or distributing crude oil, residual fuel oil or any refined petroleum product may develop and implement voluntary agreements and plans of action to carry-out such agreements which the Administrator determines are necessary to accomplish the objectives stated in section 4(b) of the Emergency Petroleum Allocation Act of 1973.

(c) The standards and procedures under subsection (d) shall be promulgated pursuant to section 553 of title 5, United States Code. They shall provide, among other things, that—

(1) Such agreements and plans of action shall be developed by meetings of committees, councils, or other groups which include representatives of the public, of interested segments of the petroleum industry and of industrial, municipal and private consumers, and shall in all cases be chaired by a regular full-time Federal employee.

(2) Meetings held to develop a voluntary agreement or a plan of action under this subsection shall permit attendance by interested persons and shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission and to the public in the affected community;

(3) Interested persons shall be afforded an opportunity to present, in writing and orally, data, views and arguments at such meetings;

(4) A full and complete verbatim transcript shall be kept of any meeting, conference or communication held to develop, implement or carry out a voluntary agreement or a plan of action under this subsection and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be available for public inspection and copying, subject to provisions of section 552(b)(1) and (b)(3) of title 5, United States Code.

(f) The Federal Trade Commission may exempt types or classes of meetings, conferences, or communications from the requirements of subsection (c)(3) and (e)(4) provided such meetings, conferences, or communications are ministerial in nature and are for the sole purpose of implementing or carrying out a voluntary agreement or plan of action authorized pursuant to this section. Such ministerial meeting, conference or communication may take place in accordance with such requirements as the Federal Trade Commission may prescribe by rule. Such persons participating in such meeting, conference, or communication shall cause a record to be made specifying the date such meeting, conference, or communication took place and the persons involved, and summarizing the subject matter discussed. Such record shall be filed with the Federal Trade Commission and the Attorney General, where it shall be made available for public inspection and copying.

(g)(1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, implementation and carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this Act. Each shall have the right to review, amend, modify, disapprove, or prospectively revoke, on its own motion or upon the request of any interested person, any plan of action or voluntary agreement at anytime, and, if revoked, thereby withdraw prospectively the immunity conferred by subsection (i) of this section.

(2) Any voluntary agreement or plan of action entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal

Trade Commission 20 days before being implemented where it shall be made available for public inspection and copying.

(h)(1) The Attorney General and the Federal Trade Commission shall monitor the development, implementation and carrying out of plans of action and voluntary agreements authorized under this section to assure the protection and fostering of competition and the prevention of anticompetitive practices and effects.

(2) The Attorney General and the Federal Trade Commission shall promulgate joint regulations concerning the maintenance of necessary and appropriate documents, minutes, transcripts and other records related to the development, implementation or carrying out of plans of action or voluntary agreements authorized pursuant to this Act.

(3) Persons developing, implementing or carrying out plans of action or voluntary agreements authorized pursuant to this Act shall maintain those records required by such joint regulations. The Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and upon reasonable notice.

(4) The Federal Trade Commission and the Attorney General may each prescribe such rules and regulations as may be necessary or appropriate to carry out their responsibilities under this Act. They may both utilize for such purposes and for purposes of enforcement, any and all powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by any other provision of law, including the antitrust laws; and wherever such provision of law refers to "the purposes of this Act" or like terms, the reference shall be understood to be this Act.

(i) There shall be available as a defense to any civil or criminal action brought under the antitrust laws in respect of actions taken in good faith to develop and implement a voluntary agreement or plan of action to carry out a voluntary agreement by persons engaged in the business of producing, refining, marketing or distributing crude oil, residual fuel oil, for any refined petroleum product that—

(1) such action was—

(A) authorized and approved pursuant to this section, and

(B) undertaken and carried out solely to achieve the purposes of this section and in compliance with the terms and conditions of this section, and the rules promulgated hereunder; and

(2) such persons fully complied with the requirements of this section and the rules and regulations promulgated hereunder.

(j) No provision of this Act shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred: (1) prior to the enactment of this Act, (2) outside the scope and purpose or not in compliance with the terms and conditions of this Act and this section, or (3) subsequent to its expiration or repeal.

(k) Effective on the date of enactment of this Act, this section shall apply in lieu of section 6(c) of the Emergency Petroleum Allocation Act of 1973. All actions taken and any authority or immunity granted under such section 6(c) shall be hereafter taken or granted, as the case may be, pursuant to this section.

(l) The provisions of section 708 of the Defense Production Act of 1950, as amended, shall not apply to any action authorized to be taken under this Act or the Emergency Petroleum Allocation Act of 1973.

(m) The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at least once every six months, a report on the impact on competition and on small business of actions authorized by this section.

(n) The authority granted by this section (including any immunity under subsection (i)) shall terminate on April 1, 1974.

(o) The exercise of the authority provided in section 113 shall not have as a principal purpose or effect the substantial lessening of competition among carriers affected. Actions taken pursuant to that subsection shall be taken only after providing from the beginning an adequate opportunity for participation by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division, who shall propose any alternative which would avoid or overcome, to the greatest extent practicable, any anticompetitive effects while achieving the purposes of this Act.

SEC. 115. EXPORTS.

To the extent necessary to carry out the purposes of this Act, the Administrator may under authority of this Act, by rule, restrict exports of coal, petroleum products, and petrochemical feedstocks, under such terms as he deems appropriate: *Provided*, That, the Administrator shall restrict exports of coal, petroleum products, or petrochemical feedstocks if either the Secretary of Commerce or the Secretary of Labor certifies that such exports wold contribute to unemployment in the United States, The Secretary of Commerce, pursuant to the Export Administration Act of 1969 (but without regard to the phrase "and to reduce the serious inflationary impact of abnormal foreign demand" in section 3(2)(A) of such Act), may restrict the exports of coal, petroleum products, and petrochemical feedstocks, and of materials and equipment essential to the production, transport, or processing of fuels to the extent necessary to carry out the purpose of this Act and sections 4(b) and 4(d) of the Emergency Petroleum Allocation Act of 1973: *Provided*, That in the event that the Administrator certifies to the Secretary of Commerce that export restrictions of products enumerated in this section are necessary to carry out the purpose of this Act, the Secretary of Commerce shall impose such export restrictions. Rules under this section by the Administrator and actions by the Secretary of Commerce under the Export Administration Act of 1969 shall take into account the historical trading relations of the United States with Canada and Mexico and shall not be inconsistent with subsections (b) and (d) of section 4 of the Emergency Petroleum Allocation Act of 1973.

SEC. 116. EMPLOYMENT IMPACT AND UNEMPLOYMENT ASSISTANCE

(a) The President shall take into consideration and shall minimize, to the fullest extent practicable, any adverse impact of actions taken pursuant to this Act upon employment. All agencies of government shall cooperate fully under their existing statutory authority to minimize any such adverse impact.

(b) The President shall make grants to States to provide to any individual unemployed, if such unemployment resulted from the administration and enforcement of this Act and was in no way due to the fault of such individual, such assistance as the President deems appropriate while such individual is unemployed. Such assistance as a State shall provide under such a grant shall be available to individuals not otherwise eligible for unemployment compensation and individuals who have otherwise exhausted their eligibility for such unemployment compensation, and shall continue as long as unemployment in the area caused by such administration and enforcement continues (but not less than six months) or until the individual is reemployed in a suitable position, but not longer than two years after the individual becomes eligible for such assistance. Such assistance shall not exceed the maximum weekly amount under the unemployment compensation program of the State in which the employment loss occurred.

(c) On or before the sixtieth day following the date of enactment of this Act. the President shall report to the Congress concerning the present and prospective impact of energy shortages upon employment. Such report shall contain an assessment of the adequacy of existing programs in meeting the needs of adversely affected workers and shall include legislative recommendations which the President deems appropriate to meet such needs, including reviisons in the unemployment insurance laws.

SEC. 117. USE OF CARPOOLS.

(a) The Secretary of Transportation shall encourage the creation and expansion of the use of carpools as a viable component of our nationwide transportation system. It is the intent of this section to maximize the level of carpool participation in the United States.

(b) The Secretary of Transportation is directed to establish within the Department of Transportation an "Office of Carpool Promotion" whose purpose and responsibilities shall include—

(1) responding to any and all requests for information and technical assistance on carpooling and carpooling systems from units of State and local governments and private groups and employees;

(2) promoting greater participation in carpooling through public information and the preparation of such materials for use by State and local governments;

(3) encouraging and promoting private organizations to organize and operate carpool systems for employees;

(4) promoting the cooperation and sharing of responsibilities between separate, yet proximately close, units of government in coordinating the operations of carpool systems; and

(5) promoting other such measures that the Secretary determines appropriate to achieve the goals of this subsection.

(c) The Secretary of Transportation shall encourage and promote the use of incentives such as special parking privileges, special roadway lanes, toll adjustments, and other incentives as may be found beneficial and administratively feasible to the furtherance of carpool ridership, and consistent with the obligations of the State and local agencies which provide transportation services.

(d) The Secretary of Transportation shall allocate the funds appropriated pursuant to the authorization of subsection (f) according to the following distribution between the Federal and State or local units of government:

(1) The initial planning process—up to 100 percent Federal.

(2) The systems design process—up to 100 percent Federal.

(3) The initial startup and operation of a given system—60 percent Federal and 40 percent State or local with the Federal portion not to exceed 1 year.

(e) Within 12 months of the date of enactment of this Act, the Secretary of Transportation shall make a report to Congress of all his activities and expenditures pursuant to this section. Such report shall include any recommendations as to future legislation concerning carpooling.

(f) The sum of $5,000,000 is authorized to be appropriated for the conduct of programs designed to achieve the goals of this section, such authorization to remain available for 2 years.

(g) For purposes of this section, the terms "local governments" and "local units of government" include any metropolitan transportation organization designated as being responsible for carrying out section 134 of title 23, United States Code.

(h) As an example to the rest of our Nation's automobile users, the President of the United States shall take such action as is necessary to require all agencies of Government, where practical, to use economy model motor vehicles.

(i)(1) The President shall take action to require that no Federal official or employee in the executive branch below the level of Cabinet officer be furnished a limousine for individual use. The provisions of this subsection shall not apply to limousines furnished for use by officers or employees of the Federal Bureau of Investigation, or to those persons whose assignments necessitate transportation by limousines because of diplomatic assignment by the Secretary of State.

(2) For purposes of this subsection, the term "limousine" means a type 6 vehicle as defined in the Interim Federal Specifications issued by the General Services Administration, December 1, 1973.

SEC. 118. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.

(a)(1) Subject to paragraphs (2), (3), and (4) of this subsection, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply to any rule or order (including a rule or order issued by a State or officer thereof) under this title (except with respect to any rule or order pursuant to sections 108 and 113 of this Act, section 205 (a), (b), and (c) of this Act, or section 4(h) of the Emergency Petroleum Allocation Act of 1973) or under the authority of any energy conservation plan.

(2) Notice of any proposed rule or order described in paragraph (1) shall be given by publication of such proposed rule or order in the Federal Register. In each case, a minimum of ten days following such publication shall be provided for opportunity to comment; except that the requirements of this paragraph as to time of notice and opportunity to comment may be waived where strict compliance is found to cause serious impairment to the operation of the program to which such rule or order relates and such findings are set out in detail in such rule or order. In addition, public notice of all rules or orders promulgated by officers of a State or political subdivision thereof or to State or local boards pursuant to this Act shall to the maximum extent practicable be achieved by publication of such rules or orders in a sufficient number of newspapers of statewide circulation calculated to receive widest possible notice.

(3) In addition to the requirements of paragraph (2), if any rule or order described in paragraph (1) is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the implementation

of such rule or order, but in all cases such opportunity shall be afforded no later than 45 days after the implementation of any such order or order. A transcript shall be kept of any oral presentation.

(4) Any officer or agency authorized to issue rules or orders described in paragraph (1) shall provide for the making of such adjustments, consistent with the other purposes of this Act or the Emergency Petroleum Allocation Act of 1973 (as the case may be), as may be necessary to prevent special hardships, inequity, or an unfair distribution of burdens and shall in rules prescribed by it establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, or an exception to or exemption from, such rules and orders. If such person is aggrieved or adversely affected by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the officer or agency and may obtain judicial review in accordance with subsection (b) when such denial becomes final. The officer or agency shall, in rules prescribed by it, establish appropriate procedures, including a hearing where deemed advisable, for considering such requests for action under this paragraph.

(5) In addition to the requirements of section 552 of title 5, United States Code, any agency authorized by this Act or the Emergency Petroleum Allocation Act of 1973 to issue rules or orders shall make available to the public all internal rules and guidelines which may form the basis, in whole or in part, for any rule or order with such modifications as are necessary to insure confidentiality protected under such section 552. Such agency shall, upon written request of a petitioner filed after any grant or denial of a request for exception or exemption from rules or orders furnish the petitioner with a written opinion setting forth applicable facts and the legal basis in support of such grant or denial. Such opinions shall be made available to the petitioner and the public within thirty days of such request and with such modifications as are necessary to insure confidentiality of information protected under such section 552.

(b) (1) Judicial review of administrative rulemaking of general and national applicability done under this Act may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days from the date of promulgation of any such rule or regulation, and judicial review of administrative rulemaking of general, but less than national, applicability done under this Act may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule or regulation, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule or regulation is to have effect.

(2) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising under this Act, or under regulations or orders issued thereunder, except any actions taken by the Civil Aeronautics Board, the Interstate Commerce Commission, Federal Power Commission, or the Federal Maritime Commission, or any actions taken to implement or enforce any rule or order by any officer of a State or political subdivision thereof or State or local board which has been delegated authority under section 122 of this Act except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the constitutionality of this title or the validity of action taken by any agency under this Act. If in any such proceeding an issue by way of defense is raised based on the constitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code. Cases or controversies arising under any rule or order of any officer of a State or political subdivision thereof or a State or local board may be heard in either (1) any appropriate State court, and (2) without regard to the amount in controversy, the district courts of the United States.

(c) The Administrator may by rule prescribe procedures for State or local boards which carry out functions under this Act or the Emergency Petroleum Allocation Act of 1973. Such procedures shall apply to such boards in lieu of subsection (a), and shall require that prior to taking any action, such boards shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views

(including oral presentation of views where practicable) at least 10 days before taking the action. Such boards shall be of balanced composition reflecting the makeup of the community as a whole.

SEC. 119. PROHIBITED ACTS.

It shall be unlawful for any person to violate any provision of title I of this Act (other than provisions of this Act which make amendments to the Emergency Petroleum Allocation Act of 1973 and section 113) or to violate any rule, regulation (including an energy conservation plan) or order issued pursuant to any such provision.

SEC. 120. ENFORCEMENT.

(a) Whoever violates any provision of section 119 shall be subject to a civil penalty of not more than $2,500 for each violation.

(b) Whoever willfully violates any provision of section 119 shall be fined not more than $5,000 for each violation.

(c) It shall be unlawful for any person to offer for sale or distribute in commerce any product or commodity in violation of an applicable order or regulation issued pursuant to this Act. Any person who knowingly and willfully violates this subsection after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to this Act shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(d) Whenever it appears to any person authorized by the Administrator to exercise authority under this Act that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of section 119, such person may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with section 119.

(e) Any person suffering legal wrong because of any act or practice arising out of any violation of section 119 may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this subsection shall authorize any person to recover damages.

SEC. 121. USE OF FEDERAL FACILITIES.

Whenever practicable, and for the purpose of facilitating the transportation and storage of fuel, agencies or departments of the United States are authorized, during the period beginning on the date of enactment of this Act and ending April 1, 1974, to enter into arrangements for the acquisition or use by domestic public entities and private industries of equipment or facilities which are surplus to the needs of such agency or department and appropriate to the transportation and storage of fuel, except that such arrangements may be made (1) only after the Administrator finds that such equipment or facilities are not available from private sources and (2) only on the basis of compensation for the acquisition or use of such equipment or facilities at fair market value prices or rentals.

SEC. 122. DELEGATION OF AUTHORITY AND EFFECT ON STATE LAW.

(a) The Administrator may delegate any of his functions under the Emergency Petroleum Allocation Act of 1973 or this Act to any officer or employee of the Federal Energy Emergency Administration as he deems appropriate. The Administrator may delegate any of his functions relative to implementation and enforcement of the Emergency Energy Petroleum Allocation Act of 1973 or this Act to officers of a State or political subdivision thereof or to State or local boards of balanced composition reflecting the make-up of the community as a whole. Such officers or boards shall be designated and established in accordance with regulations as the Administration shall promulgate under this Act. Section 5(b) of the Emergency Petroleum Allocation Act of 1973 is repealed effective on the effective date of the transfer of functions under such Act to the Administrator pursuant to section 103 of this Act.

(b) No State law or State program in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation, order, or energy conservation plan issued

pursuant to this Act except insofar as such State law or State program is inconsistent with the provisions of this Act, or such a regulation, order, or plan.

SEC. 123. GRANTS TO STATES.

Any funds authorized to be appropriated under section 127(b) shall be available for the purpose of making, grants to States to which the Administrator has delegated authority under section 122 of this Act, or for the administration of appropriate State or local energy conservation programs which are the basis of an exemption made pursuant to section 105(a)(2) of this Act from a Federal energy conservation plan which has taken effect under section 105 of this Act. The Administrator shall make such grants upon such terms and conditions as he may prescribe by rule.

SEC. 124. REPORTS ON NATIONAL ENERGY RESOURCES.

(a) For the purpose of providing to the Departments of Interior and Justice, to the maximum extent possible, reliable data on reserves, production, distribution, and use of petroleum products, natural gas, and coal, the Attorney General and the Secretary of the Interior shall promptly publish for public comment a regulation requiring that persons doing business in the United States, who, on the effective date of this Act, are engaged in exploring, developing, processing, refining, or transporting by pipeline, any petroleum product, natural gas, or coal, shall provide detailed reports to the Attorney General and the Secretary of the Interior every sixty calendar days. Such reports shall show for the preceding sixty calendar days such person's (1) reserves of crude oil, natural gas, and coal; (2) production and destination of any petroleum product, natural gas, and coal; (3) refinery runs by product; and (4) and other data required by the Attorney General or the Secretary of the Interior for such purpose. Such regulation shall also require that such persons provide to the Administrator such reports for the period from January 1, 1970, to the date of such person's first sixty days report. Such regulation shall be promulgated 30 days after such publication. The Attorney General or the Secretary of the Interior shall publish quarterly in the Federal Register a meaningful summary analysis of the data provided by such reports.

(b) The reporting requirements of this section shall not apply to the retail operations of persons required to file such reports. Where a person shows that all or part of the data required by this section is being reported by such person to another Federal agency, the Attorney General and the Secretary of the Interior may exempt such person from reporting all or part of such data directly to him, and upon such exemption, such agency shall, notwithstanding any other provision of law, provide such data to the Attorney General and the Secretary of the Interior. The district courts of the United States are authorized, upon application of the Attorney General and the Secretary of the Interior, to require enforcement of such reporting requirements.

(c) Upon a showing satisfactory to the Attorney General and the Secretary of the Interior by any person that any report or part thereof obtained under this section from such person or from a Federal agency would, if made public, divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person, such report, or portion thereof, shall be confidential in accordance with the provisions of section 1905 of title 18 of the United States Code, except that such report or part thereof shall not be deemed confidential for purposes of disclosure to (1) the Attorney General, or (2) the Secretary of the Interior.

SEC. 125. INTRASTATE GAS.

Nothing in this Act shall expand the authority of the Federal Power Commission with respect to sales of non-jurisdictional natural gas.

SEC. 126. EXPIRATION.

The authority under this title to prescribe any rule or order or take other action under this title, or to enforce any such rule or order, shall expire on midnight April 1, 1974, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, April 1, 1974.

SEC. 127. AUTHORIZATION OF APPROPRIATIONS.

(a) There are authorized to be appropriated to the Federal Energy Emergency Agency to carry out its functions under this Act and under other laws, and to

make grants to States under section 122, $75,000,000 for the fiscal year ending June 30, 1974, and $75,000,000 for the fiscal year ending June 30, 1975.

(b) For the purpose of making payments under grants to States under section 123, there are authorized to be appropriated $50,000,000 for the fiscal year ending June 50, 1974, and $75,000,000 for the fiscal year ending June 30, 1975.

(c) For the purpose of making payments under grants to States under section 116, there is authorized to be appropriated $500,000,000 for the fiscal year ending June 30, 1974.

SEC. 128. SEVERABILITY.

If any provision of this Act, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 129. PRICE AUTHORITY.

The President shall exercise his authority under the Economic Stabilization Act of 1970, as amended, and the Emergency Petroleum Allocation Act of 1973 to specify prices for sales of crude oil, residual fuel oil or refined petroleum products in or imported into the United States which avoid windfall profits by sellers. For purposes of this section, windfall profits shall be defined as those profits which are excessive or unreasonable, taking into consideration normal profit levels. This section shall be effective only until December 31, 1974.

TITLE II—COORDINATION WITH ENVIRONMENTAL PROTECTION REQUIREMENTS

SEC. 201. SUSPENSION AUTHORITY.

Title I of the Clean Air Act (42 U.S.C. 1857 et seq.) is amended by adding at the end thereof the following new section:

"ENERGY EMERGENCY AUTHORITY

"SEC. 119. (a)(1)(A) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before November 1, 1974, temporarily suspend any stationary source fuel or emission limitation as it applies to any person, if the Administration finds that such person will be unable to comply with such limitation during such period solely because of unavailability of types or amounts of fuels. Any suspension under this paragraph and any interim requirement on which such suspension is contained under paragraph (3) shall be exempted from any procedural requirements set forth in this Act or in any other provision of local, State, or Federal law; except as provided in subparagraph (B).

"(B) The Administrator shall give notice to the public of a suspension and afford the public an opportunity for written and oral presentation of views prior to granting such suspension unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In any case, before granting such a suspension he shall give actual notice to the Governor of the State, and to the chief executive officer of the local government entity in which the affected source or sources are located. The granting or denial of such suspension and the imposition of an interim requirement shall be subject to judicial review only on the grounds specified in paragraphs (2)(B) and (2)(C) of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304(a)(2) or 307 (b) and (c) of this Act.

"(2) In issuing any suspension under paragraph (1) the Administrator is authorized to act on his own motion without application by any source or State.

"(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the source receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and (C) requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitation are in fact reasonably available to that person

(as determined by the Administrator). For purposes of clause (C) of this paragraph, availability of natural gas or petroleum products which enable compliance shall not make a suspension inapplicable to a source described in subsection (b)(1) of this section.

"(4) For purposes of this section:

"(A) The term 'stationary source fuel or emission limitation' means any emission limitation, schedule, or timetable for compliance, or other requirements, which is prescribed under this Act (other than section 303, 111(b), or 112) or contained in an applicable implementation plan and which is designed to limit stationary source emissions resulting from combustion of fuels, including a probation on, or specification of, the use of any fuel of any type or grade or pollution characteristics thereof.

"(B) The term 'stationary source' has the same meaning as such term has under section 111(a)(3).

"(b)(1) Except as provided in paragraph (2) of this subsection, any fuel-burning stationary source (A) which is prohibited from using petroleum products or natural gas as fuel by reason of an order issued under section 106(a) of the Energy Emergency Act, or which the Administrator determines began conversion to the use of coal as fuel during the 90-day period ending on December 15, 1973, and (B) which converts to the use of coal as fuel, shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source.

"(2)(A) Paragraph (1) of this subsection shall apply to a source, only if the Administrator finds that emissions from the source will not materially contribute to a significant risk to public health and if the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved, after notice to interested persons and opportunity for presentation of views (including oral presentations of views). A plan submitted under the preceding sentence shall be approved only if it provides (i) for compliance by the means, and in accordance with a schedule, which meets the requirements of subparagraph (B), and (ii) that such source will comply with requirements which the Administrator shall prescribe to assure that emissions from such source will not materially contribute to a significant risk to public health. The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

"(B) The Administrator shall prescribe regulations requiring that any source to which this subsection applies submit and obtain approval of its means for and schedule of compliance. Such regulations shall include requirements that such schedules shall include dates by which such source must (i) enter into contracts or other enforceable obligations for obtaining a long-term supply of coal or coal by-products (which contracts or obligations must have received prior approval of the Administrator), and (ii) takes steps to obtain continuous emission reduction systems necessary to permit such source to burn such coal or coal by-products and to achieve the degree of emission reduction required by the following sentence (which steps and systems must have received prior approval of the Administrator). Such regulations shall also require that the source achieve as expeditiously as practicable considering the type of coal to be used (but not later than January 1, 1979) the small degree of emission reduction as it was required to achieve by the applicable implementation plan in effect on the date of enactment of this section. Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable including requirements described in clauses (A) and (B) of subsection (a)(3).

"(C) The Administrator (after notice to interested persons and opportunity for presentation of views, including oral presentations of views, to the extent practicable) (i) may, prior to November 1, 1974, and shall thereafter, prohibit the use of coal by a source to which paragraph (1) applies if he determines that the use of coal by such source is likely to materially contribute to a significant risk to public health; and (ii) may require such source to use coal of any particular type, grade, or pollution characteristic if such coal is available to such source. Nothing in this subsection (b) shall prohibit a State or local agency from taking action which the Administrator is authorized to take under this paragraph.

"(3) For purposes of this subsection, the term "air pollution requirement" means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including this Act (except for any requirement prescribed under this subsection or section 303), and which is designed to limit stationary source

emissions resulting from combustion of fuels (including a restriction on the use or content of fuels). A conversion to coal to which this subsection applies shall not be deemed to be a modification for purposes of section 111(a) (2) and (4) of this Act.

"(4) A source to which this subsection applies may, upon the expiration of the exemption under paragraph (1), obtain a one year postponement of the application of any requirement of an applicable implementation plan under the conditions and in the manner provided in section 110(f).

"(c) The Administrator may by rule establish priorities under which manufacturers of continuous emission reduction systems shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to users in air quality control regions with the most severe air pollution. No rule under this subsection may impair the obligation of any contract entered into before enactment of this section. No State or political subdivision may require any person to use a continuous emission reduction system for which priorities have been established under this subsection except in accordance with such priorities.

"(d) The Administrator shall study, and report to Congress not later than May 31, 1974, with respect to—

"(1) the present and projected impact on the program under this Act of fuel shortages and of allocation and end-use allocation programs;

"(2) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction systems would have on the total environment and on supplies of fuel and electricty;

"(3) the number of sources and locations which must use such technology based on projected fuel availability data;

"(4) priority schedule for implementation of continuous emission reduction technology, based on public health or air quality;

"(5) evaluation of availability of technology to burn municipal solid waste in these sources; including time schedules, priorities analysis of unregulated pollutants which will be emitted and balancing of health benefits and detriments from burning solid waste and of economic costs;

"(6) projections of air quality impact of fuel shortages and allocations;

"(7) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time frames prescribed in the Act, including associated considerations of cost, time frames, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

"(8) proposed allocations of continuous emission reduction technology for nonsolid waste producing systems to sources which are least able to handle solid waste byproduct, technologically, economically, and without hazard to public health, safety, and welfare; and

"(9) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentration of sulfur dioxide in the ambient air.

"(e) No State or political subdivision may require any person to whom a suspension has been granted under subsection (a) to use any fuel the unavailability of which is the basis of such person's suspension (except that this preemption shall not apply to requirements identical to Federal interim requirements under subsection (a)(1)).

"(f)(1) It shall be unlawful for any person to whom a suspension has been granted under subsection (a)(1) to violate any requirement on which the suspension is conditioned pursuant to subsection (a)(3).

"(2) It shall be unlawful for any person to violate any rule under subsection (c).

"(3) It shall be unlawful for the owner or operator of any source to fail to comply with any requirement under subsection (b) or any regulation, plan, or schedule thereunder.

"(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i)(3).

"(g) Beginning January 1, 1975, the Administrator shall publish at no less than 180-day intervals, in the Federal Register the following:

"(1) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (b) applies. Such

progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsections.

"(2) Up-to-date findings on the impact of this section upon—

"(A) applicable implementation plans, and

"(B) ambient air quality.

"(h) Nothing in this section shall affect the power of the Administrator to deal with air pollution sources presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.

"(i)(1) In order to reduce the likelihood of early phaseout of existing electric generating facilities during the energy emergency, any electric generating power plant (A) which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on the date of enactment of the Energy Emergency Act) of the operator of such plant, (B) for which a certification to that effect has been filed by the operator of the plant with the Environmental Protection Agency and the Federal Power Commission, and (C) for which the Commission has determined that the certification has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single one-year postponement as provided in paragraph (2).

"(2) Prior to the date on which any plant eligible under paragraph (1) is required to comply with any requirement of an applicable implementation plan, such source may apply (with the concurrence of the Governor of the State in which the plant is located) to the Administrator to postpone the applicability of such requirement to such source for not more than one year. If the Administrator determines, after balancing the risk to public health and welfare which may be associated with a postponement, that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increase to pay for such costs, and other appropriate factors, then the Administrator shall grant a postponement of any such requirements.

"(3) The Administrator shall, as a condition of any postponement under paragraph (2), prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph (2).

"(j)(1) The Administrator may, after public notice and opportunity for presentation of views in accordance with section 553 of title 5, United States Code, and after consultation with the Federal Energy Emergency Administration designate persons to whom fuel exchange orders should be issued. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any suspension under subsection (a) of this section or conversion to coal to which under subsection (b) applies or of any allocation under the Energy Emergency Act or the Emergency Petroleum Allocation Act.

"(2) The Administrator of the Federal Energy Administration shall issue exchange orders to such persons as are designated by the Administrator under paragraph (1) requiring the exchange of any fuel subject to allocation under the preceding Acts effective no later than 45 days after the date of the designation under paragraph (1), unless the Administrator of the Federal Energy Administration determines, after consultation with the Administrator, that the costs or consumption of fuel, resulting from such exchange order will be excessive.

"(3) Violation of any exchange order issued under paragraph (2) shall be a prohibited act and shall be subject to enforcement action and sanctions in the same manner and to the same extent as a violation of any requirement of the regulation under section 4 of the Emergency Petroleum Allocation Act of 1973."

SEC. 202. IMPLEMENTATION PLAN REVISIONS.

(a) Section 110(a) of the Clean Air Act is amended in paragraph (3) by inserting "A" and by adding at the end thereof the following new subparagraph:

"(B)(1) For any air quality control region in which there has been a conversion to coal under section 119(b), the Administrator shall review the applicable implementation plan and no later than one year after the date of such conversion determine whether such plan must be revised in order to achieve the national primary standard in which the plan implements. If the Administrator determines that any such plan is inadequate, he shall require that a plan revision be submitted by the State within three months after the date of notice to the State of such determination. Any plan revision which is submitted by the State after

notice and public hearing shall be approved or disapproved by the Administrator, after public notice and opportunity for public hearing, but no later than three months after the date required for submission of the revised plan. If a plan provision (or portion thereof) is disapproved (or if a State fails to submit a plan revision) the Administrator shall, after public notice and opportunity for a public hearing, promulgate a revised plan (or portion thereof) not later than three months after the date required for approval or disapproval.

"(2) Any requirement for a plan revision under paragraph (1) and any plan requirement promulgated by the Administrator under such paragraph shall include reasonable and practicable measures to minimize the effect on the public health of any conversion to which section 119(b) applies."

(b) Subsection (c) of section 110 of the Clean Air Act (42 U.S.C. 1857 C–5) is amended by inserting "(1)" after "(c)"; by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and by adding the following new paragraph:

"(2)(A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than May 1, 1974, on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Administrator of the Federal Energy Administration, and the Chairman of the Council on Environmental Quality.

"(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subsection. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any applicable implementation plan submitted by a State on such plan's including a parking surcharge regulation.

"(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

"(D) For purposes of this paragraph, the term 'parking surcharge regulation' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles. The term 'management of parking supply' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations. The term 'preferential bus/carpool lane' shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses and/or carpools."

SEC. 203. MOTOR VEHICLE EMISSIONS.

(a) Section 202(b)(1)(A) of the Clean Air Act is amended by striking out "1975" and inserting in lieu thereof "1977"; and by inserting after "(A)" the following: "The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identi-

cal to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5)(A) of this subsection for light-duty vehicles and engines manufactured during model year 1975."

(b) Section 202(b)(1)(B) of such Act is amended by striking out "1976" and inserting in lieu thereof "1978"; and by inserting after "(B)" the following: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that emissions of such vehicles and engines may not exceed 2.0 grams per vehicle mile."

(c) Section 202(b)(5)(A) of such Act is amended to read as follows:

"(5)(A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within 60 days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination precribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977."

(d) Section 202(b)(5)(B) of the Clean Air Act is repealed and the following subparagraphs redesignated accordingly.

SEC. 204. CONFORMING AMENDMENTS.

(a)(1) Section 113(a)(3) of the Clean Air Act is amended by striking out "or" before "112(c)", by inserting a comma in lieu thereof, and by inserting after "hazardous emissions)" the following ", or 119(f) (relating to priorities and certain other requirements)".

(2) Section 113(b)(3) of such Act is amended by striking out "or 112(c)" and inserting in lieu thereof ", 112(c), or 119(f)".

(3) Section 113(c)(1)(C) of such Act is amended by striking out "or section 112(c)" and inserting in lieu thereof ", section 112(c), or section 119(f)".

(4) Section 114(a) of such Act is amended by inserting "119 or" before "303".

(b) Section 116 of the Clean Air Act is amended by inserting "119(b), (c) and (e)," before "209".

SEC. 205. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT.

(a) Any allocation program provided for in title I of this Act or in the Emergency Petroleum Allocation Act of 1973, shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the country designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

(b) In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal pursuant to section 106, the Department of Health, Education, and Welfare shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c) No action taken under this Act shall, for a period of 1 year after initiation of such action, be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856). However, before any action under this Act that has a significant impact on the environment is taken, if practicable, or in any event within 60 days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act, to the greatest extent practicable within this

time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a 30-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under this Act which will be in effect for more than a one year period (other than action taken pursuant to subsection (d) of this section) or any action to extend an action taken under this Act to a total period of more than 1 year shall be subject to the full provisions of the National Environmental Policy Act notwithstanding any other provision of this Act.

(d) Notwithstanding subsection (c) of this section, in order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 (83 Stat. 856) for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

SEC. 206. ENERGY CONSERVATION STUDY.

(a) The Administrator of the Federal Energy Administration shall conduct a study on potential methods of energy conservation and, not later than 6 months after the date of enactment of this Act, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

(1) the energy conservation potential of restricting exports of fuels or energy-intensive products or goods, including an analysis of balance of payments and foreign relations implications of any such restrictions;

(2) federally sponsored incentives for the use of public transit, including the need for authority to require additional production of buses or other means of public transit and Federal subsidies for the duration of the energy emergency for reduced fares and additional expenses incurred because of increased service;

(3) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource recovery in order to reduce energy demand, including the economic costs and fuel consumption trade-off which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials;

(4) the costs and benefits of electrifying rail lines in the United States with a high density of traffic; including (A) the capital costs of such electrification, the oil fuel economies derived from such electrification, the ability of existing power facilities to supply the additional power load, and the amount of coal or other fossil fuels required to generate the power required for railroad electrification, and (B) the advantages to the environment of electrification of railorads in terms of reduced fuel consumption and air pollution and disadvantages to the environment from increased use of fossil fuel such as coal; and

(5) means for incentive or disincentives to increase efficiency of industrial use of energy.

(b) Within 90 days of the date of enactment of this Act, the Secretary of Transportation, after consultation with the Federal Energy Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public mass transportation systems and encouraging increased ridership as alternatives to automobile travel.

(c) Such plan shall include, but shall not be limited to—

(1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the provision of expanded mass transportation service in urban areas;

(2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under section 142(a)(2) of title 23, United States Code (the "Federal Aid Highway Act of 1973"), for the purpose of providing ad-

ditional capacity for and encouraging increased use of public mass transportation systems;

(3) recommendations for a program of demonstration projects to determine the feasibility of fare-free and low-fare urban mass transportation systems, including reduced rates for elderly and handicapped persons during nonpeak hours of transportation;

(4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;

(5) recommendations on the feasibility of providing tax incentives for persons who use public mass transportation systems.

(d) In consultation with the Federal Energy Administrator, the Secretary of Transportation shall make an investigation and study for the purpose of conserving energy and assuring that the essential fuel needs of the United States will be met by developing a high-speed ground transportation system between the cities of Tijuana in the State of Baja California, Mexico, and Vancouver in the Province of British Columbia, Canada, by way of the cities of Seattle in the State of Washington, Portland in the State of Oregon, and Sacramento, San Francisco, Fresno, Los Angeles, and San Diego in the State of California. In carrying out such investigation and study the Secretary shall consider, but shall not be limited to—

(1) the efficiency of energy utilization and impact on energy resources of such a system, including the future impact of existing transportation systems on energy resources if such a system is not established;

(2) coordination with other studies undertaken on the State and local level; and

(3) such other matters as he deems appropriate.

The Secretary of Transportation shall report the results of the study and investigation pursuant to this Act, together with his recommendations to the Congress and the President no later than December 31, 1974.

SEC. 207. REPORTS.

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 201 through 205 of this title.

SEC. 208. FUEL ECONOMY STUDY.

Title II of the Clean Air Act is amended by redesignating section 213 as section 214 and by adding the following new section:

"FUEL ECONOMY IMPROVEMENT FROM NEW MOTOR VEHICLES

"SEC. 213. (a)(1) The Administrator and the Secretary of Transportation shall conduct a joint study, and shall report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committees on Public Works and Commerce of the United States Senate within 120 days following the date of enactment of this section, concerning the practicability of establishing a fuel economy improvement standard of 20 percent for new motor vehicles manufactured during and after model year 1980. Such study and report shall include, but not be limited to, the technological problems of meeting any such standard, including the leadtime involved; the test procedures required to determine compliance; the economic costs associated with such standard, including any beneficial economic impact; the various means of enforcing such standard; the effect on consumption of natural resources, including energy consumed; and the impact of applicable safety and emission standards. In the course of performing such study, the Administrator and the Secretary of Transportation shall utilize the research previously performed in the Department of Transportation, and the Administrator and the Secretary shall consult with the Administrator of the Federal Energy Administration, the Chairman of the Council on Environmental Quality, and the Secretary of the Treasury. The Office of Management and Budget may review such report before its submission to Congress but the Office may not revise the report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting such report. In connection with such study, the Administrator may utilize the authority provided in section 307(a) of this Act to obtain necessary information.

"(2) For the purpose of this section, the term 'fuel economy improvement standard' means a requirement of a percentage increase in the number of miles of transportation provided by a manufacturer's entire annual production of new motor vehicles per unit of fuel consumed, as determined for each manufacturer in accordance with test procedures established by the Administrator pursuant to this Act. Such term shall not include any requirement for any design standard or any other requirement specifying or otherwise limiting the manufacturer's discretion in deciding how to comply with the fuel economy improvement standard by any lawful means."

TITLE III—STUDIES AND REPORTS

SEC. 301. AGENCY STUDIES.

The following studies shall be conducted, with reports on their results submitted to the Congress:

(1) Within 30 days after the date of enactment of this Act:

(A) The Administrator of the Federal Energy Emergency Administration shall conduct a review of all rulings and regulations issued pursuant to the Economic Stabilization Act to determine if such rulings and regulations are contributing to the shortage of fuels and of materials associated with the production of energy supplies.

(B) All Federal departments and agencies, including the Federal regulatory agencies, are directed to undertake a survey of all activities over which they have special expertise or jurisdiction and identify and recommend to the Congress and to the President specific proposals to significantly increase energy supply or to reduce energy demand through conservation programs.

(C) The Secretary of the Treasury and the Director of the Cost of Living Council shall recommend to the Congress specific incentives to increase energy supply, reduce demand, to encourage private industry and individual persons to subscribe to the goals of this Act. This study shall also include an analysis of the price-elasticity of demand for gasoline.

(D) The Administrator shall report to the Congress concerning the present and prospective impact of energy shortages upon employment. Such report shall contain an assessment of the adequacy of existing programs in meeting the needs of adversely affected workers, together with legislative recommendations appropriate to meet such needs, including revisions in the unemployment insurance laws.

(E) The Secretary of the Interior and the Secretary of Commerce are directed to prepare a comprehensive report of (1) United States exports of petroleum products and other energy sources, and (2) foreign investment in production of petroleum products and other energy sources to determine the consistency or lack thereof of the Nation's trade policy and foreign investment policy with domestic energy conservation efforts. Such report shall include recommendations for legislation.

(2) Within 6 months after the date of enactment of this Act:

(A) The Administrator shall develop and submit to the Congress no later than May 15, 1974, a plan for providing incentives for the increased use of public transportation and Federal subsidies for maintained or reduced fares and additional expenses incurred because of increased service for the duration of the Act. For the purposes of Section —, the plan provided for in this section shall be considered an energy conservation plan.

(B) The Administrator of the FEEA shall recommend to the Congress actions to be taken regarding the problem of the siting of energy producing facilities.

(C) The Administrator of the FEEA shall conduct a study of the further development of the hydroelectric power resources of the Nation, including an assessment of present and proposed projects already authorized by Congress and the potential of other hydroelectric power resources, including tidal power and geothermal steam.

(D) The Administrator shall prepare and submit to Congress a plan for encouraging the conversion of coal to crude oil and other liquid and gaseous hydrocarbons.

(E) The Secretary of the Interior shall study methods for accelerating leases of energy resources on public lands including oil and gas leasing onshore and offshore, and geothermal energy leasing.

SEC. 302. REPORTS OF THE PRESIDENT TO CONGRESS.

The President shall report to the Congress every sixty days, beginning February 1, 1974, on the implementation and administration of this Act and the Emergency Petroleum Allocation Act of 1973, together with an assessment of the results attained thereby. Each report shall include specific information, nationally and by region and State, concerning staffing and other administrative arrangements taken to carry out programs under these Acts and may include such recommendations as he deems necessary for amending or extending the authorities granted in this Act or in the Emergency Petroleum Allocation Act of 1973.

Mr. JACKSON. Mr. President, this amendment represents the compromise we have worked out with the minority, which I hope the Senate will accept. The amendment is everything that was in the conference report, except four areas, to which I shall refer at this time.

First, it would delete the windfall profit section of the bill, **section 110.**

Second, it would change the act regarding the termination date in **section 126** from May 15, 1975, to April 1, 1974.

Third, there would be a deletion in **section 103(d),** creating the Federal Energy Emergency Administration, regarding the requirements of the Federal Reports Act, and provisions for simultaneous budget submissions. That would be eliminated from **section 103.**

Fourth, there would be a modification of the industry reporting section—that is **section 124**—to require reporting only to the Departments of Justice and the Interior.

The compromise—these four points—will enable the administration to take such actions as are necessary to deal with the current energy emergency for this winter. At the same time, it will provide Congress an opportunity to legislate a new bill in January, February, and March. It will give Congress an opportunity prior to April 1 to complete more in depth action dealing with these important areas of conservation of energy, which is a critical area, the longer term gas rationing authority, and problems on clean air provisions which do extend to May 15, 1975; and also the long-term requirements which would run to the same date, May 15, 1975, regarding the conversion from oil to coal.

I think this is the best possible agreement that can be reached under all the circumstances, with Senators on both sides giving and taking in the spirit of sensible compromise, in light of all the circumstances.

There were a number of other proposals made which we could not accept. I think we might mention just one area. One area relates to a list of some 20 proposed conservation measures which the administration would like to delete from the part of the bill which gives Congress the right of veto. Specifically they have asked for a deletion of the veto right in the area relating to the volume of gasoline that could be restricted in sales to individual consumers.

Second, they wanted a deletion from the veto right as it pertains to a reduction in lighting, in commercial and industrial usage. It was my judgment that these are sensible and necessary things to do. We took this matter up in conference.

I believe most, if not all, of the Senate conferees did agree in these two areas. We were almost unanimous on these two points. But I think it would create nothing but confusion to make an exception in this

area. I would oppose any attempt to delete the veto in the two areas I referred to, and I think the Senator from Maine, who joined me in that effort in conference would agree on that.

Under this proposal Congress will have ample time to deal with the question of veto by legislating because we will have to legislate between January 21 and April 1 when the act would expire.

Therefore, I feel that these are two items on which Congress should refrain from any veto action while we are considering the extension of the act, with any changes to be made after April 1.

Mr. President, I yield to the distinguished Senator from Maine. May I say that the distinguished senior Senator from Maine played a very important role in trying to hammer out a series of compromises in the conference. I wish to pay tribute to him for the good sense, and good judgment of give and take he displayed in trying to resolve this matter. I compliment him as well as other members on the committee for their efforts during that 30-hour conference period in 2 days. I especially wish to call to the attention of my colleagues the usual fine cooperation and many contributions of the senior Senator from West Virginia and chairman of the Public Works Committee, Mr. Randolph. Throughout this long and tiring conference, which lasted until nearly midnight on two consecutive difficult circumstances. All of the members of the conference committee have my appreciation for their dedication, good humor, and patience during this effort. I hope we will succeed and pass a bill which the Nation needs at a very critical time in our history.

Mr. MUSKIE. I thank my colleague. It was a difficult conference to manage and I compliment him for bringing it to a head.

On this subject, as I said in conference, at least respecting my State, to really save fuel under any conservation program we are going to do it now or at least we will have to set the pattern. I feel the Administrator should have the authority to do whatever can be done between now and then to maximize the savings. If we do not do it between now and then, we will have lost the major opportunity to see us through the winter with minimum damage.

For that reason I urged the House Members to eliminate the congressional veto and put this job in the Administrator's hands, and to give him the authority to move. But the House would not buy that.

The laundry list of possible conservation measures the Administrator might take was a little scary from the point of view of the House conferees. So ultimately we tried what the Senator proposes here, and that is that we give the Administrator authority to ban the Sunday sale of gasoline and limit electric lighting to business, industrial, and residential. But the House would not buy even that.

So I think it would be foolish to send such a laundry list to the other body. I think the administrator should be reassured on the floor of the Senate by those of us who had any role to play in framing this legislation that we would oppose the use of that veto with respect to these particular measures. I give that assurance for whatever it is worth. I speak only for myself, but I am happy to give it.

If the Administrator moves in this direction the country and the Congress will support him. It is reasonable, and I am confident he will be supported.

Mr. JACKSON. I join in the expression of the problem by the able Senator from Maine. I think we ought to make very clear that we, of course, expect the Administrator to meet the requirements of due process as they make these moves; if the moves are to be sensible there must be that due process.

Under the provisions of this act the Administrator can put such measures into effect immediately, but it does require a hearing and notice after they have been into effect. We expect that the administrator, and I have great confidence in Mr. Simon, will not act in an arbitrary and capricious way, but the notice and hearing procedure will be carried out in good faith. They are necessary to have the support of those called upon to submit to the restrictions.

Mr. MUSKIE. I, too, have confidence in Mr. Simon. I am impressed by the way he goes about his job. I think he will handle it responsibly and he has my support for these particular measures.

Mr. HANSEN. Mr. President, we could all make long speeches. I am not going to do so, but I do want to pay my respects to the Senator from Washington (Mr. Jackson), the chairman of the committee; the Senator from Maine (Mr. Muskie) for the great job he has done; the Senator from Louisiana (Mr. Long) for the job he has done; to the Senator from West Virginia (Mr. Randolph); and many others who have contributed so unflaggingly of their energy and wisdom in trying to bring about a resolution of this matter.

I yield to my friend from Arizona.

Mr. FANNIN. Mr. President, I wish to join my colleagues in commending the conferees for the work they have been doing, the time they have devoted, and the great effort made to bring legislation to the floor that would be acceptable, and standing up for what they felt was right and upholding the Senate's position.

I want to concur in what has been said by the Senator from Washington and the Senator from Maine regarding the veto matter. I commend the Senator from Maine for bringing it to conference and emphasizing what it would mean. In fact, he said what we do in the next 30 days will decide what will be accomplished all winter long because if we get behind, we will never catch up. On commercial and industrial light they expect to save as much as 800,000 barrels a day.

Other than to compliment the Senator from Tennessee (Mr. Baker) and the Senator from Alaska (Mr. Stevens) for their diligent work. The Senator from Kansas (Mr. Dole) is to be congratulated for his floor amendment that was also proposed by the Congressman from California (Mr. Goldwater) and the House accepted it, and in turn it was accepted by the conferees.

I will not take further time, but I express sincere appreciation to those who made this possible.

Mr. KENNEDY. Mr. President, in the first three quarters of 1973, the various major oil companies had increases in profits of 50 to 60, even 90 percent.

That was before the 12½-percent price increase permitted in home heating oil prices on December 6.

It was before the $1 per barrel price increase announced 2 days ago which will add some $136 million to consumer costs in Massachusetts.

My constitutents are not only being told that they will be going cold but that they will be going poor at the same time.

For home heating oil, we already are paying 150 percent higher prices than we did a year ago.

The least that we could do is impose an excess-profits tax to prevent the oil companies from unfairly gouging the public.

The conference committee report contained reasonable provisions prohibiting windfall profits.

While I support the provisions for emergency energy conservation as I did when I testified in favor of this bill and when it came to the floor, I cannot support its omission of the requirement for imposition of a windfall profits tax.

In addition the compromise that is before us omits any requirement for the oil companies to report to the Federal Trade Commission or the General Accounting Office. We have learned too well that the failure to require that the Congress have access to industry information, as we would have had through the GAO, will seriously weaken our capacity to legislate intelligently during this period of energy shortages.

For those two reasons, both of which exempts the major oil companies from the sacrifices required of all other citizens, I shall oppose this bill.

Mr. DOLE. Mr. President, the section which prohibits unreasonable actions on allocations intended to deal with a problem that is intrinsic within any fuel allocation program—the problem of equitable distribution.

It is difficult to define exactly what an equitable distribution might be. Generally, it would seem fair and equitable to require that every sector of the economy bear an equal percentage of the total reduction required by the shortage. Yet this precludes giving a specific usage or an emergency need special consideration. The equity requirement, combined with the desirability of maintaining flexibility in any allocation program, makes it nearly an impossible task to legislatively define what an equitable program would be.

But though the task is difficult, I do feel that it is essential that we demonstrate a clear legislative intent that any allocation program be as fair and equitable to all sectors of the economy as is possible, given the flexibility that is required. **[Sec. 107.]**

I was pleased therefore to work to secure retention of the provision which would require that any allocation program which has been made operative to date or which shall be made operative hereafter shall not unreasonably discriminate among users or classes of users.

The need for such an amendment was illustrated by the initial fuel allocation reductions imposed upon the general aviation industry. As initially announced, a 42-percent reduction in fuel for general aviation would have been implemented, even though commercial aviation was reduced by a substantially smaller percentage and other modes of transportation would have incurred an even smaller reduction in fuel allocations. Since the initial allocation reduction was announced, the administration modified its proposed reductions, and it now appears that only about a less drastic overall reduction in fuel will be imposed on the general aviation industry. Yet in the 1-week period following announcement of the 42-percent reduction proposal, the impact on the general aviation industry, in general, and on Wichita, Kans.—the leading city in the general aviation industry—was dramatic.

More than 2,400 employees were laid off at a plant in Wichita, and without the adjustments which were later made by the administration, it is estimated that as many as 8,000 aviation employees could have lost their jobs in Wichita alone, and as many as 100,000 jobs would have been jeopardized nationwide. When the impact of the aviation job reduction is measured on the total economy it is estimated that this could have cost the city of Wichita 20,000 jobs, and the country as a whole 250,000 jobs over the next few months.

The impact of the decision regarding general aviation fuel allocation was so great that special action was needed. In the first place, it appears that the decision was particularly harsh on the aviation industry in comparison to the cutbacks that were being imposed on other sectors of the transportation field. And second, the severe impact the proposed allocation would have had on the economy of Wichita and numerous other cities across the country gave the issue a priority of a different nature which deserved special consideration, given the existing needs and fuel supplies.

But the Congress, with this section is on record to express legislatively the intent that the allocation program should not unreasonably discriminate among various users and classification of users. It requires that pleasure driving not be given a higher priority than pleasure flying, that business driving not be treated differently than business flying—in other words, that there be no discrimination between users and classes of users of fuel for a given purpose.

The section is not intended to destroy the flexibility of the program. It will not prevent fuel allocations from reflecting priority or emergency needs. If additional fuel supplies are needed in agriculture to assure an adequate supply of food, or if additional supplies of fuel are needed for home heating purposes, the emergency needs must be met. But considering the limited supplies of fuel that are available, we must insure that classes of users or individual users of fuels which have equal priorities be equally treated. All users of fuel having the same priority should bear equally the burden of the fuel shortage.

The section, to a certain extent, limits the administrative discretion which Congress allows the President under any fuel allocation authority. But at the same time, it does not tie the hands of the administration or take away the flexibility needed to meet emergency situations. It would prevent arbitrary decisions from being rendered. It would also prevent any user or classification of user from being unfairly treated because of its high visibility because it would serve as a good example of our effort to limit fuel consumption. It would also prevent decisions from being made for purely political reasons.

The life of every American will be affected by the fuel shortages, and we must all bear our share of the inconveniences, burdens, economic hardships, and difficulties which are sure to come in the next few months. But it is important, and I feel Congress has the responsibility of assuring that the burden of the fuel shortage be distributed equitably among Americans and sectors of the economy. I therefore believe that the section insuring that, in this difficult energy crisis, the sacrifices which are sure to be required, shall be shared as equitably and fairly as possible is an important addition to the bill.

SEVERAL SENATORS. Vote! Vote!

Mr. JACKSON. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. Bentsen), the Senator from Nevada (Mr. Cannon), the Senator from Idaho (Mr. Church), the Senator from Missouri (Mr. Eagleton), the Senator from Mississippi (Mr. Eastland), the Senator from North Carolina (Mr. Ervin), the Senator from Alaska (Mr. Gravel), the Senator from Colorado (Mr. Haskell), the Senator from South Carolina (Mr. Hollings), the Senator from Minnesota (Mr. Humphrey), the Senator from Hawaii (Mr. Inouye), the Senator from Utah (Mr. Moss), the Senator from Rhode Island (Mr. Pastore), the Senator from Missouri (Mr. Symington), the Senator from Georgia (Mr. Talmadge), and the Senator from Mississippi (Mr. Stennis) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Humphrey), the Senator from Rhode Island (Mr. Pastore), the Senator from Nevada (Mr. Cannon), and the Senator from Missouri (Mr. Eagleton) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. Cotton) is absent because of illness in his family.

The Senators from Vermont (Mr. Aiken and Mr. Stafford), the Senator from Oklahoma (Mr. Bellmon), the Senator from Utah (Mr. Bennett), the Senator from Tennessee (Mr. Brock), the Senator from Massachusetts (Mr. Brooke), the Senator from New York (Mr. Buckley), the Senator from Hawaii (Mr. Fong), the Senator from Arizona (Mr. Goldwater), the Senator from Florida (Mr. Gurney), the Senator from Oregon (Mr. Hatfield), the Senator from North Carolina (Mr. Helms), the Senator from Idaho (Mr. McClure), the Senator from Kansas (Mr. Pearson), the Senator from Illinois (Mr. Percy), the Senators from Ohio (Mr. Saxbe and Mr. Taft), and the Senator from Texas (Mr. Tower) are necessarily absent.

Also, the Senator from New Mexico (Mr. Domenici), the Senator from Colorado (Mr. Domenick), the Senator from New York, (Mr. Javits), the Senator from Delaware (Mr. Roth), and the Senator from Alaska (Mr. Stevens) are necessarily absent.

If present and voting, the Senator from Texas (Mr. Tower) would vote "yes."

The result was announced—yeas 52, nays 8, as follows:

[No. 620 Leg.]

YEAS—52

Abourezk	Byrd, Harry F., Jr.	Fulbright
Allen	Byrd, Robert C.	Griffin
Baker	Chiles	Hansen
Bartlett	Clark	Hart
Bayh	Cranston	Hartke
Beall	Curtis	Hathaway
Bible	Dole	Hruska
Burdick	Fannin	Huddleston

Hughes	Mondale	Scott, Hugh
Jackson	Montoya	Scott, William L.
Johnston	Muskie	Sparkman
Long	Nelson	Stevenson
Magnuson	Nunn	Thurmond
Mansfield	Packwood	Tunney
McClellan	Pell	Williams
McGee	Proxmire	Young
McGovern	Randolph	
McIntyre	Ribicoff	

NAYS—8

Biden	Kennedy	Schweiker
Case	Mathias	Weicker
Cook	Metcalf	

NOT VOTING—40

Aiken	Ervin	Pastore
Bellmon	Fong	Pearson
Bennett	Goldwater	Percy
Bentsen	Gravel	Roth
Brock	Gurney	Saxbe
Brooke	Haskell	Stafford
Buckley	Hatfield	Stennis
Cannon	Helms	Stevens
Church	Hollings	Symington
Cotton	Humphrey	Taft
Domenici	Inouye	Talmadge
Dominick	Javits	Tower
Eagleton	McClure	
Eastland	Moss	

So Mr. Jackson's motion was agreed to.

SENATE RESUMPTION OF DEBATE ON FIRST CONFERENCE REPORT ON S. 2589, DECEMBER 22, 1973

Adjournment and the Energy Bill

Mr. Baker. Mr. President, it is now 1:40 in the afternoon on December 22. We are apparently unable, at this point at least, even to agree with the distinguished other body on the method and manner we will adjourn sine die and how we will resolve ourselves on the matter of the authority of the leadership of the respective Houses to reconvene the Congress.

We stand, of course, in the shadow of the possibility that the President of the United States may feel the necessity to reconvene the Congress.

I have no idea of what will happen in those respects. I am not sure when we will adjourn sine die, or if we will adjourn sine die, but I have these remarks to make in the spirit of conciliation and in the spirit of this holiday moment.

During this past week I heard strong words in the conference on the energy bill. I was privileged to be a conferee, as was the distinguished Senator from Montana, the Acting President pro tempore. There was hard bargaining. There was extended debate. There were late night sessions and cancellations of plans not only for adjournment, but also for travel arrangements, speaking engagements, and the like, all in recognition of the fact that we were dealing with a matter of the utmost importance.

I suppose that one of the underlying and never-stated questions of the conference was who would have the authority to direct our route through the rocks and shoals of the present energy crisis, how much power would be given to the President and how much power retained by the Congress, the veto right, and the resolution of disapproval that the Congress might retain.

Those were legitimate concerns. Congress must continue to exercise its constitutional powers and be a full participant in this matter. However the matter of coequal branches of the Government was legitimate as well. Stated in the vernacular, someone has to be the boss. Someone has to make the tough decisions and have the authority to make them stick.

But the note of conciliation that I would like to utter in these final hours of this session of this Congress are that notwithstanding our disagreements, notwithstanding our unfortunate inability to arrive at a mutual understanding between the two bodies in the form of an energy bill, notwithstanding the long hours and tedious work that has apparently now been lost, as least for this session of this Congress, notwithstanding the frayed tempers of the conferees and Members alike, and no doubt as well of the executive department, notwithstanding

those things, we have to keep in mind that we still do have a crisis and a problem.

We must confront this crisis and deal with the problem. Our recent inability to deal with it must not harden into polarization.

It is the country that is the hostage and not the Congress and not the White House.

So, when we come back, whether that is tomorrow or next week or the 3d of January or the 21st of January, I hope that both bodies will put aside the emotions of the moment and dampen the fires and the controversies and once again get down to the business of the country.

It would be of small concern for the House to win or for the Senate win or for the White House to win if people have to burn air in the fuel jets of their furnaces or their automobiles are stationary because they have no fuel. There will be little consolation for the country, or for those who are entrusted with making the policy decisions in this country. We still have an energy shortage. We cannot afford the luxury of winning or losing.

So many things were not done as a result of our failure to pass an energy bill. I was a conferee, not from the Committee on Interior and Insular Affairs, which had primary jurisdiction, but from the Public Works Committee which had jurisdiction over the extensive environmental provisions of this legislation.

I may say on the floor and in the presence of my distinguished chairman, the senior Senator from West Virginia (Mr. Randolph), that I was very pleased at the progress we made concerning the necessity for a continuation of the fight for clean air and water. We did not throw out the baby with the bath water. We accommodated to the realities of the moment. We wrote, I believe, a realistic and practical section dealing with the automotive emissions that continues our forward momentum and progress in this field, and which will add certainly to the standards of the Clean Air Act. Industry will have an opportunity to fully realize the promise of the new techniques and new designs and to provide for improved fuel economy, as well.

I was impressed that the Clean Air Act provisions of the bill [Title II] which were hammered out in what was, in effect, a subcommittee of the conference were representative of the environmental concerns of the Members of both the Senate and the House. When we brought our agreement on the environmental provisions to the whole conference, it was adopted almost immediately without extensive debate by the full conference.

In this spirit of conciliation, I must say that I do not want to see these sections go down the tube. We worked hard on them and made good progress.

I urge, and I fully expect, that when the next session of this Congress convenes and we pass an energy bill, that we will take into account those matter upon which we reach a satisfactory accommodation as well as those things that are still in hot dispute.

I hope that we can retain the clean air provisions—both the mobile source provisions and those dealing with revision of standards applicable to stationary power sources.

And as far as I am concerned, our temporary failure to succeed in this matter should in no way prevent our doing what needs to be done

for the country early in the next session of the Congress. I believe there is a reservoir of good will that is far greater in scope than the reservoir of agony that brought us to this unfortunate situation.

I suppose that these are the last words I will have to say in this session of the Congress. I would like to take this opportunity to express my good wishes and my respect and admiration for all of those with whom I have served, to the distinguished chairman of the Public Works Committee and to the leadership on both sides of the aisle.

Mr. RANDOLPH. Mr. President, will the Senator yield?

Mr. BAKER. Mr. President, it is my great privilege to yield to the distinguished Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I wish to reinforce what the Senator from Tennessee has said in reference to the conference subcommittee's work as we attempted to cope with providing for a continuance of the environmental standards directly attributable to the Clean Air Amendments of 1970. I speak not a pleasantry, but a fact, when I express my appreciation to the Senator from Tennessee (Mr. Baker) and to the Senator from Maine (Mr. Muskie).

As chairman of the Public Works Committee I joined in our effort. We also were privileged to work with Representative Paul Rogers of Florida and Representative Hastings of New York. There were many hours of consultation toward achieving a clarification of the points involved. During this work there was an undergirding and an understanding among the conferees.

When we went to the conference with the Senate's recommendations there was a general confidence among the other Members in what had been done.

I certainly agree with what the Senator who has said; we must not, indeed cannot, allow what has been done, from the standpoint of clean air and the quality of life to be tossed aside. The standards under which we have moved forward represent concerted work, over a period of years which was substantial and necessary. Now we are talking about a pause, not a retreat, but a realistic accommodation to the energy crisis. We were proposing to do this on one or more occasions, even prior to the conference action on the emergency energy legislation.

I further endorse what the Senator from Tennessee (Mr. Baker) has said about the need for the passage of the energy legislation. When this occurs I hope it will incorporate a considerable amount of what was done by the Senate but did not pass the Congress. I said yesterday during the debate on the emergency energy legislation that some parts of that conference report should have been passed by Congress before this session was to conclude. I still believe as I did yesterday, but I also feel called on to say, while the leadership on both sides of the aisle is present in the Chamber, that we should , as quickly as possible, come to grips with this matter again in the next session. Next year we cannot allow this matter to remain unsettled, let us say, until the spring. We should move promptly on our commitment, even though we failed in this instance. The citizens of our country expect us to act more completely and fully than we were able to do in this first session.

It certainly would be my hope that by early February we would be able to act on emergency energy legislation. A delay beyond that date would be unwarranted.

When the Congress returns we must act with reason rather than rancor, if the essential solutions to our immediate energy crisis are to be forthcoming. Toward this objective the administration and the Congress must join forces and work together.

I recall the words of President Nixon in his November 2 message to the Congress when the Chief Executive said—

> As essential as these actions are to the solution of our immediate problem, we must recognize that standing alone, they are insufficient. Additional steps must be taken, and for that perhaps, we must have new legislation.
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> I am therefore proposing that the Administration and the Congress join forces and together, in a bipartisan spirit, work to enact an emergency energy bill. Members of my Administration have been consulting with appropriate leaders of the Congress for more than two weeks on this matter. Yesterday I met with the bipartisan leaders of the House and Senate and found them constructive in spirit and eager to get on with the job. In the same manner, I pledge the full cooperation of my Administration. It is my earnest hope that by pushing forward together, we can have new emergency legislation on the books before the Congress recesses in December.
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> Based on previous consultations with the Congress, I have decided not to send a specific Administration bill to the Congress on this matter but rather to work with the Members in developing a measure that would be acceptable to both the executive and legislative branches.

While this spirit of consultation was reflected during the Senate's hearings and markup on the legislation, it was noticeably absent when it came time for action on the conference report.

If early Senate action is to occur next year such consultations will be essential; this Senator pledges his cooperation with the administration. My remaining concern is that the White House respond in kind. I share hope for cooperation.

As a postscript, I must add, that we cannot forget that there are several measures that have or will become law. The President, I am sure, will sign the 55-mile-an-hour mandatory limitation on the speed of our vehicles. This will provide a tremendous conservation of gasoline, possibly as high as 165,000 barrels a day. It will contribute not only to more pleasant driving, but also to a better safety record in the months ahead. This measure might otherwise be overlooked; however it was passed by Congress this session. The Congress also has passed Alaska pipeline legislation, the Emergency Petroleum Allocation Act of 1973, and the administration opposed Eagleton amendment to the Economic Stabilization Act of 1973. These measures, which are the positive product of the Congress, have served as the cornerstone of present energy conservation actions proposed by the President.

But the record of the Senate does not stop there; among the various measures which also have passed the Senate in recent months are the Energy Research and Development Policy Act, the National Energy Conservation Act, legislation providing a statutory basis for the Federal Energy Administration. Each of the measures represents an element of a national energy policy, which our country so vitally needs. Yet, none of the measures would be close to enactment without congressional initiative.

Mr. BAKER. Mr. President, I shall not prolong these last minutes, but shall merely say that I thoroughly agree with the observations of the distinguished chairman of the committee. I think that by taking the actions we have taken with regard to the environment provisions of this energy legislation we have put the country on notice that we in-

tend to move in this field. We have disclosed through the conference report, which unfortunately we are not adopting, our work product.

Some of the uncertainty regarding clean air standards is dissipated, for surely both the country and industry, especially the automobile industry, understands the direction in which we are moving, and we shall continue to move in a direction which will benefit the entire country.

I reiterate that I hope we will lay our disappointment aside, and that when we return, we will pass this legislation, because not only the Senate, the House, and the President, but the whole country will be the loser if we do not.

Mr. LONG. Mr. President, I wish to express my supreme disappointment that the Senate and the House have not been able to come together in agreement on an energy bill.

Last night the distinguished majority leader expressed a wish that the Senator from Louisiana join with those who were conferring with Senators on the Republican side in the Vice President's ceremonial office, to help to work out a compromise. I think the record might as well reflect at this point that I was pressing those who opposed the conference, to move toward a middle ground, as well as with those who were expressing themselves in favor of the conference report, and in supporting the chairman of the committee, the distinguished Senator from Washington (Mr. Jackson), that both sides should make concessions.

I think that those who agreed with the administration, in general, and those who seriously objected to the conference report were willing to yield on all but about four of those points. The manager of the bill, the distinguished Senator from Washington (Mr. Jackson) and his colleagues were willing to come to terms on a number of items, and there was some agreement that the others were willing to yield.

So the Senate did a very fine job of resolving those things in ways that men of honor could advance something which could promote the national interest.

I am an admirer of the chairman of the Committee on Interstate and Foreign Commerce, of the House of Representatives, Mr. Staggers. As one who admires him, I am very much disappointed that we were not able to come to terms with him. Unfortunately, it appears that his position was completely adamant on one item. We were never completely rigid about it, speaking for myself. We still are willing to consider it and try to reach a point where we can reconcile our differences.

Unfortunately, the press reports indicate that the chairman of the House Committee on Interstate and Foreign Commerce said that the Senate was trying to run over the House, to treat it as though it were a doormat. I hope the chairman of the House committee will read my remarks and learn that we did all that we could do to get the Senate to agree on something and were trying to get the House to agree. We tried to get the House to agree to a compromise, but it was impossible to do so.

So far as I can determine, in talking to my colleagues in the House, and so far as the record will reveal, there was no opportunity for Members of the House of Representatives to grasp all of the good will at Christmastide that went into the proposed Senate compromise.

We regret very much—I am sure that I do—that very little of our good intentions were understood by those in the House of Representatives. In fact, I do not believe it was even suggested for a moment that we had men of good will on this side. We are still that way, and I hope that the spirit of the yuletide season will penetrate to the House of Representatives, as indeed it has in the Senate, and that between now and the first of the year those who have exercised tremendous power in the House will be in a more conciliatory mood.

I asked my friend, Joe Waggonner, who serves on the Ways and Means Committee, how it could possibly have been that the Commerce Committee in the House could ever have been accorded the power to pass a so-called excess profits tax law or a Renegotiation Act. The best information I could obtain is that it never occurred to anyone on the Ways and Means Committee of the House that the Rules Committee would grant such an extraordinary rule, that the committee, which did not have jurisdiction of tax or renegotiation measures, would be permitted to take such a matter to the floor without at least according those on the tax-writing committees the opportunity to share the floor and be heard.

Nevertheless, that is how it was. So the Commerce Committee became the tax committee on this, having drafted the first tax law that that committee had drafted in many years—perhaps the first time it has ever drafted a tax law. That committee has been totally unyielding on it. Apparently it was yielding to the point that they were willing to eliminate coal from their Renegotiation Act. I understand—and I will stand corrected if the record proves me wrong—that the chairman of the Commerce Committee, coming from a coal-producing State, did support the measure to eliminate coal from the Renegotiation Act which he would impose on oil.

That really does not get to the real problem. The problem is that one-third of our oil must be imported. We cannot expect anyone to sell us world market oil at a price below the world market price. I know that the Commerce Committee of the House can do a fine job of regulating the activities that occur within the United States. I have never seen it proved that the Commerce Committees of Senate or House, or their joint efforts, can do very much about regulating foreign countries. I will await with interest to see it demonstrated if they can regulate Nigeria, Venezuela, Iraq, Iran, or Saudi Arabia. If they want to try it, I am willing to give them my support and my help, provided they will not exert their efforts to regulate foreign nations on a measure as vital as the energy bill which must become law.

That is basically what much of the problem is. We may have to pay a higher price for oil. We may have to pay a higher price for liquefied natural gas during the period of the blockade and the emergency in order to acquire what we can to keep Americans warm. It would be unfortunate if Americans, willing to pay any price to obtain fuel to heat their homes, to carry on their businesses, and to move around, found themselves in a situation where they cannot obtain fuel at any price.

I fear, Mr. President, that that may be what will develop between now and next spring, if the emergency becomes sufficiently acute.

I am convinced that Congress will measure up. Unfortunately, at this point, we do not have enough of an emergency on our hands for statesmanship to reach its zenith. However, I am fully convinced that when the emergency is sufficiently with us, Members of the Senate and our colleagues in the House will prove that they are equal to the task.

Some time ago I said that I really did not think the Senate has the power to destroy this country. I stated that facetiously. I really feel that way about Congress. I do not think Congress has the power to destroy a nation as great as this one—certainly not by neglect. One reason is that Members of the Senate and House react when the emergency becomes acute. We will, in my judgment, measure up to the problem that faces us.

As the chairman of the tax-writing committee, I expect to recommend to that committee and I have strong hope the committee will vote for a measure which does tax excess profits achieved during the energy crisis. But I would hope very much that whatever measure we will write will encourage people to produce more energy, and provide us with more fuel, and that it will be a measure that sees that the purpose should be to achieve more production, greater wealth for this country and, at the same time, to tax those who have some gains to which they are not rightfully entitled. If the details can be worked out, I believe that the Finance Committee and the Ways and Means Committee are capable of working it out.

I regret to say that the effort by the Commerce Committee thus far has fallen short of the target. For example, in their initial effort to write a renegotiation and an excess profits tax law, they set as their base a number of years which from the point of view of the domestic industry were depressed years. Obviously, an excess profits tax should be based on the excess over a fair profit, not the excess over a depressed year. Then, having failed to write language that would properly describe an excess profit, they sought to turn over to a single man, the so-called Administrator, the right to say what he thought the excess profit should be.

It has never been my experience that one man could write a tax law or a Renegotiation Act as well as the broader responsibility of a committee. I would hope that in the days ahead, as passions cool and as the yuletide season gains hold on Senators and Members of the House, the impasse in which we find ourselves will dissolve into the kind of good will which we wish every man and woman in the coming year.

SENATE RESUMPTION OF DEBATE ON FIRST CONFERENCE REPORT ON S. 2589, JANUARY 21, 1974

NATIONAL ENERGY EMERGENCY ACT OF 1973—CONFERENCE REPORT

Mr. JACKSON. Mr. President, I submit a report of the committee of conference on S. 2589, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2589) to authorize and direct the President and State and local governments to develop contingency plans for reducing petroleum consumption, and assuring the continuation of vital public services in the event of emergency fuel shortages or severe dislocations in the Nation's fuel distribution system, and for other purposes, having met, after full and free conference, have agreed to recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

Mr. JACKSON. Mr. President, when the first session of Congress adjourned 1 month ago on December 21, 1973, one major item of legislative business was left unfinished.

After weeks of intensive effort by both bodies of Congress on S. 2589, the Energy Emergency Act, the Senate was prevented from voting on the conference report before adjournment.

The White House, working with the oil industry, was able to prevent a vote on this measure because they opposed provisions of the bill which would first, eliminate windfall profits for oil corporations in this time of soaring prices **[Sec. 110]** and second, require disclosure of reserves, production and processing data, to assure greater corporate responsiveness and accountability. **[Sec. 124.]**

The administration also objected strenuously to a third provision in the emergency bill which allowed congressional oversight and veto powers over energy conservation measures proposed by the executive branch. Such a function is absolutely essential, however, in order to assure responsiveness to constituent needs, and to preclude any unreasonable demands on the American people. **[Sec. 105.]**

Mr. President, this measure is urgently needed now to provide the administration with interim authorization for measures which they would like to implement but cannot enforce. This measure is needed to provide a statutory basis for the conservation measures which must be implemented if the Nation is to live within its energy means.

Under present authority, the administration cannot impose rationing, cannot enforce compliance with energy conservation measures, cannot require disclosure of industry data vital to energy policy formu-

lation, cannot alter Federal tax policy to eliminate unfair tax preferences for energy producers. Yet, the executive branch has expressed a need for each of these powers.

While the administration is currently urging voluntary energy conservation measures, it has no authority to enforce such measures. For example, throughout the past month the administration's estimate of the probability of rationing has been plus or minus 50 percent. Without enactment of the pending legislation, no rationing contingency plan could be implemented—no matter how urgent the need.

Similarly, the greatest impediment to the effective management of current fuel shortages by the Federal Energy Office and other Government agencies is a paucity of reliable and timely information on the nature, impact and severity of those shortages. More significantly, the superb spirit of cooperation demonstrated by the people of this Nation in complying with voluntary energy conservation programs is dependent on public trust and confidence in the information given them by their elected leaders.

Both Mr. Simon and the president have publicly acknowledged the necessity for provision by the oil industry of a "full and constant accounting of inventories—production costs, and reserves." Yet, the Federal Energy Office does not have sufficient authority to require full disclosure on the part of energy corporations. The Energy Emergency Act contains the authority necessary to permit the administration to obtain the information required to develop and implement those programs needed to meet the challenge of the energy shortage. Of equal importance is the requirement that data on the Nation's energy reserves and production be published in the Federal Register for the information of the public.

Furthermore, as the President noted in his radio address to the Nation on Saturday, we should—

> Prevent the big oil companies and other major energy producers from making an unconscionable profit out of this crisis. Too many Americans have sacrificed too much to allow that to happen.

I strongly support the President in that view, as I am sure do all of my colleagues. The conference report represents a first step toward that end.

Mr. President, I would not suggest that this conference report is flawless. Our own bill in the Senate was not; neither was that of the House. However, in my view, the Nation has never before been confronted by a peacetime crisis of the current magnitude. We are faced with problems which reach far beyond simple questions of personal inconveniences due to lowered thermostats or waits at the gas pump. For example, recent energy price increases will likely have a drastic effect on the economy as a whole, on industry, and on the lifestyles of the people of this country. Similarly, worldwide petroleum shortages and sharply rising prices will affect this country's foreign trade, balance of payments, and relations with both traditional allies and potential adversaries.

We could choose to be hesitant, to await the passage of needed legislation until we have answers to a near-endless list of questions arising from the current crisis. The preferable alternative, however, is resolute action by the adoption of the conference report now before us. Further legislation will be called for in any event to prefect the prin-

ciples of this bill, and at the appropriate time, I will support those proposals for change which are shown to be warranted.

I would suggest to my colleagues that the Energy Emergency Act is a worthwhile product of the democratic political process, the essence of which is compromise. It represents the best efforts of the Senate and House to act in the interests of the country as a whole in the light of the best information available at this time. I have no doubt that one or more of its provisions will, of necessity, be expanded or deleted or significantly modified by the Congress in the months to come in the light of additional experience, new information, and simple trial and error. However, we must act now to provide the executive branch with the means to take needed actions in the country's interest. For that reason, I urge my colleagues to vote in favor of the conference report.

Mr. RANDOLPH. Mr. President, the chairman of the conference committee is a very knowledgeable Senator on this matter. Those of us who served on the conference committee recognize that certainly the resolution of many differences of opinion are contained in the conference report. Naturally, there is not 100 percent personal acceptance of every compromise by each conferee. There seldom is.

The able chairman of the committee indicated just now exactly what would be done in the form of legislation. But he is not adamant on that. Is that correct?

Mr. JACKSON. The Senator is correct.

Mr. RANDOLPH. Mr. President, I have felt that there is flexibility, and that there is an umbrella under which we can work. Certainly, the Congress is desirous of reflecting responsibility to our constituents in this matter. I make this suggestion, which I think is very important:

I was a Member of the House of Representatives during the first 100 days of the first administration of President Franklin D. Roosevelt. I am the only Member of this body who served in the House during that period. I think it will be remembered that what we did under the impact of a depression in those first 100 days constitutes the response of Congress to a commitment that the people expect us to discharge. Excessive hurrying and unreasonableness with respect to any subject is not to be desired. But I feel that, within the next 30 days Congress—the Senate and the House—should place upon the desk of the President an energy emergency measure that will be responsive to the needs of the American people and will permit us to meet in part, at least, the challenge of combating a crisis which, in my opinion, is very real. We must act in a well-reasoned manner and as expeditiously as would be consistent with reaching sound solutions.

Yet, we must realize that the Congress is clearly faced with a difficult and complex problem as it examines the various interpretations of windfall or excessive profits. But, as we begin the second session, it is essential that we come to grips with this issue based on the most accurate knowledge of the facts that we can atttain.

This Senator, the able chairman of the Finance Committee (Mr. Long), and all Members of this body desire equity in the development of an excess profits tax. The differences mostly arise over where equity starts and stops. We all recognize the importance of generating sufficient capital to assure the necessary new energy supplies to meet our country's future energy requirements. There is no question but that

this will require huge investments if industry is to produce and market the necessary energy supplies within the next few years.

Therefore, I am convinced that any excess profits should be dedicated to the development of new energy sources. These moneys can and must be utilized for oil and gas exploration and for research and development programs. Moreover, as I stressed during the conference on the Energy Emergency Act, the Congress also must give careful consideration to the validity of an excess profits tax to be levied not alone on energy companies but across the board on all industries.

I thank the Senator from Washington for yielding to me.

Mr. JACKSON. Mr. President, I shall respond briefly.

I point out that in the closing days of the session, in December, we modified the bill, sent it to the House, and the House overwhelmingly rejected it. It was the conference report minus the so-called renegotiation authority. I want to make that point, so that Senators will understand that we have tried an alternate course, and the House has rejected it.

I believe we now have a responsibility to vote the conference report up or down; and I would hope that the Senate will take such action without delay. This is an emergency. This report provides the authority that is needed, and I believe the time to act is now.

Mr. LONG. Mr. President, during the adjournment I sent a newsletter to the State of Louisiana. It pretty well spells out my view about the energy crisis. I should like to read one paragraph from it.

We should not allow energy companies to take unfair advantage of the current crisis to make excessive or "windfall" profits. Whether this should be prohibited by excess-profits taxes or by a stiff requirement that any such profits be reinvested in energy production, or a combination of both, is a subject being carefully studied by the Senate Finance Committee, of which I am chairman. A tax on windfall profits can be drafted in such a way so we will get more energy. It should not be done in a manner that denies us more fuel.

In my judgment, this bill, containing the so-called windfall tax, was hastily drafted. **[Sec. 110.]** It meets the requirements of hysteria and public misunderstanding and would provide the country with less energy, rather than more. I do not think we ought to make appeals to public misunderstanding. We should pass a measure that will help to get more energy for the Nation and to achieve distributions that will be sound.

Let me show how completely idiotic one aspect of the bill is. It proposes to require 100-percent renegotiation and payback of any profit that a producer makes which exceeds a certain limit. Let me read this:

The greater of—
(A) the average profit obtained by sellers of energy products during the calendar years 1967 through 1971—

Which was a depressed period, by the way—

Or (B) the average profit obtained by the particular seller of energy products during such calendar years.

If I read that correctly, let me tell the Senate how it would affect a particular case I have in mind. Suppose a producer in Louisiana has one oil well, and now he has it within his power to drill a second one. If the first oil well is producing 100 barrels a day, and he drills a second one, a good well producing 100 barrels a day, he may well have to give back every nickel he makes off the second well.

In my judgment, Mr. President, no responsible legislator should vote for a provision which might require a man to give up every single penny he makes by doubling his production. One would think a man should not only be permitted but should be specifically encouraged to produce more energy for the benefit of the Nation and make a profit out of doing it.

It has been proposed by the President of the United States that a properly conceived windfall tax should contain a plow-back proposal, so that if a man makes twice as much money and spends the additional amount in drilling and finding more energy, or in building refineries or pipe lines to get it to the market, he would be permitted to pay the same tax that he paid previously if he invested all of the new earnings in producing more energy.

We already have various price control laws, and the President has all the power he needs to control the price of oil and gas at the well or at the pump. There is no need of any laws in that respect; they can control it at whatever price they think it should be.

If a man, selling at the price the law permits him to sell, provides more energy, there ought to be some incentive somewhere for him to do that, and where is it? It is certainly not contained in the Staggers proposal. That proposal, contained in the conference report, would in many cases destroy all incentive to provide more energy.

Mr. President, that is absolutely ridiculous, in my judgment. Furthermore, it cannot be administered, I think, under any fair standards. The only argument for it that I know of is that this is such a bad law that Congress will be forced to change it. It is argued by some that Congress will have an opportunity to vote for some other excess profits or windfall profits tax, because it will of necessity have to repeal this one.

This is such a bad proposal that this legislative baby has already been abandoned by its own papa. The chairman of the House committee, Mr. Staggers, after he saw that the Senate would not accept this proposal, at some hour after midnight the day we adjourned, proceeded to offer a new version of an excess profits tax.

That second proposal would have permitted the Attorney General to decide how much money everybody should make, and any amount over the amount that the Attorney General decided would be taken away from the taxpayer on a 100 percent basis. This new proposal equally as unworkable as the one now in the conference report and the fact that one like that would be offered was an admission that the present one is not any good that the chairman of the House committee showed he was flexible and was willing to consider a new substitute, provided it was his own, for what everybody now agrees should not become law. Even though it is his own baby, he has abandoned it, notwithstanding that we are told that it is this or nothing.

Mr. President, I am not persuaded this should be treated as an all-or-nothing-at-all situation. I think there is enough judgment, commonsense, and reason in the Senate to draw a good law, no matter how arbitrary the House of Representatives may be.

I think we should reason together, and explain that we do want to pass an excess profits tax law. I shall vote for one, provided it is one that will get us more energy rather than less. Chairman Mills of the Ways and Means Committee tells me today that he is announcing hear-

ings in the House Ways and Means Committee starting about 10 days from now, just as soon as they can dispose of the pension legislation which we passed and sent to them last year, and that they will propose what they think a proper windfall profits tax law should be.

As far as this Senator is concerned, I am perfectly willing to conduct hearings simultaneously with those of the Ways and Means Committee. Just as fast as a witness testifies there, if we want that witness, he can testify here. I do not think it would be appropriate to try to move ahead of the House committee, but I do think we ought to at least give this monstrosity, this silly thing, the advantage of intensive hearings. As it now stands, this proposal has not had the light of a single day's hearings, on either House or Senate side.

So I am starting, tomorrow, a hearing to receive testimony from people who have administered the Nation's tax laws, Democrats, and Republicans, to ask them what problems they see in this measure, if we passed this sort of legislative proposal.

I would hope, Mr. President, that the Senate would give us at least 2 days to inform the Senate on the foolishness that we will commit if we pass this measure as it stands at this time, because I think if the Senate allows us 2 days to present that information, it will be persuaded to allow us about 10 more days to present additional information, and if it allows us time to know what we are doing, I do not think the Senate will make that sort of an irresponsible mistake.

Mr. BENTSEN. I think what we are all trying to achieve by this legislation is an equitable sharing of the burdens in this country. I do not think any of us wants to see any company or individual make windfall profits off the troubles of this Nation. In bringing this about, we ought to try to pass good legislation.

Is this really an emergency piece of legislation, if they say it does not go into effect for a year? It does not go into effect for a full year. The reason, they say that is because they are convinced, too, that it is not good legislation, and they want to give the appropriate committees time to pass on legislation that will achieve the objectives. The appropriate committees in both the Senate and the House have now stated they are ready to conduct these hearings, and they will be expeditious hearings.

Does it make any sense to pass bad legislation to try to bring about good legislation? We are going to bring that about anyway, because there is a sharing of views here, and we understand we should not have windfall profits off the troubles of this Nation and that we ought to share these burdens equitably. But in bringing this to pass, we want to encourage self-sufficiency in energy in this country. And we want to phrase this tax law as to really encourage, yes, even force these companies to drill in this country, to bring in more oil, to help hold down the price of oil, to build the refineries that should have been built and are necessary in this country in order to have the fuel oil and gasoline we need, and hope we are going to be able to avoid rationing.

I believe we can increase productivity if we pass this tax legislation appropriately. I know that any man who stands up from an oil producing State, be it Texas, Louisiana, or to a lesser degree West Virginia, is immediately suspect. They say he is going to speak for the oil industry.

The oil industry is an important industry in my State. It provides hundreds of thousands of jobs, and that concerns me. You bet it does. I

want to see it a healthy and viable industry, and it had better be if we are going to be self-sufficient in this country on our energy supplies.

But let me remind Senators that I was a Senator from an oil-producing State who voted for Senator Eagleton's amendment for mandatory allocations, to see that there was an equitable distribution of energy supplies in this country. I stood on this floor before the Christmas recess and said we ought to change the leasing agreements offshore. The leasing agreements offshore in this country today provide for 16⅔ percent of the revenues from production going to the U.S. Treasury. I said that is not enough, that we ought to change it to the same kind of agreement these companies have given to 11 other countries in the world, so that when they recover their costs 65 percent of the production goes to the host country and 35 percent of it goes to the company.

I have met a lot of opposition over that, but I think if they can do it for foreign countries, they can offer the same kind of deal to our taxpayers in drilling on public lands for private profit.

What I want to see is equity, and that is what I am striving for in this piece of legislation.

Again, Mr. President, what emergency is there to it if they say it does not go into effect for a year? Why can we not, then, have the time, by orderly procedure in public hearings, so that everyone can be heard, and find out the ultimate effect of this legislation and discover the kind of legislation that will work toward self-sufficiency in energy supplies?

I thank the Senator very much.

Mr. LONG. Mr. President, I thank the Senator from Texas.

Permit me to say that if we are to meet the energy crisis that exists in this Nation both now and for the future, there is going to have to be a huge increase in investments to produce more energy. I have not seen anyone's estimate of that, except the Chase Manhattan Bank's, as they know something about oil, gas, and coal. They should be qualified to speak on the subject, because they loan large amounts of money for those enterprises and they know what it takes for someone to succeed in that kind of business. They tell me that between now and 1985 we are going to be needing about $500 billion in investments in oil, gas, coal, shale, and atomic power. Most of that will have to be in oil and gas because that is the one the easiest to get at at this moment, based on the present state of the technology. This huge investment will have to be done over a period of the next 12 years if we are going to be able to provide this Nation with its requirements.

Figure it out for yourself, Mr. President. That means that we will need about $40 billion in investments a year in this type of thing.

They further say that it would not be fair to ask a lender to lend all of the $500 billion, but that we should be able to take about half the money out of profits in order to provide that type of effort. That would mean that companies would have to take about $20 billion out of profits to plow back in to match the $20 billion that the banks and lending institutions would be lending for this purpose.

If the energy companies cannot earn $20 billion a year, then the lending institutions think it would be bad business to lend the additional $20 billion a year to match it.

Where is that money going to come from? It will have to come from profits.

But, here we have a law that would not let you make the profits. So this is a law whose impact works directly against solving the energy crisis. This is so because it would not permit private enterprise to earn enough money to pay for its share of the wells and the refineries and the pipelines and the mines that must be developed. It would not permit private industry to earn enough money to pay for the profit share of the investment. It would, therefore, be a bad loan for any banker to lend you the money to try to do the other half on.

What it would mean is that the money would not be available. So, what would the alternative be?

A few—not a majority but a few—would like to nationalize the industry and try to find the money by taxing the eyeballs off the American people to find the money to drill for the oil, to drill for the gas, to mine for the coal to build the atomic plants—or whatever it takes otherwise.

That is a poor way to proceed, in my judgment, to place such a completely irresponsible and unfair tax—such a completely unreasonable tax—on the industry so that the industry could not do what is expected of it, or by rigging the tax laws by so that the industry cannot possibly do its job properly. Then the argument would be put forward that we should nationalize the industry because, it is said, it has failed to do the job.

It would be foolish for anyone to do business like that, unless he believes we should socialize everything in this country, or he does not believe in the free enterprise system. I am sure that not a single Senator believes that we should abandon the free enterprise system over this issue.

Mr. GRAVEL. Mr. President, I should like to reinforce one of the comments made about the Chase Manhattan Bank. In fact, it was testimony that your subcommittee, Mr. Chairman, heard during hearings in October, a full 30 to 40 days before this monstrosity was hatched. The hearings were to obtain information on how we should handle the problem of excess profits.

As a result of the hearings, the week before we adjourned, the last session, I put in a bill that had a section in it to deal with, in what I thought, was a more reasonable fashion, the problem of excess profits. The dilemma is easily faced. We must avoid what usually happens in this type of panic legislation. We must not go in the wrong direction.

The American people can understand that it will take money to solve the problem, that there is no magic to it, that it will not happen automatically. We will not get more oil or any other kind of energy without more money.

As recommended by Winger, the oil companies—if they are to meet their responsibilities in meeting capital requirements, as was just laid out by my colleague from Louisiana—will have to enjoy a minimum of 18 percent profitability.

I find unconscionable that newspapers and organizations inveigh against the oil companies for getting excess profits. There is no question that the oil companies are no better and no worse than any other part of American industry. Most of the oil companies have not seen reasonable profits in the past 15 years. The average profits on oil over

the past 15 years have been one point below manufacturing—they have been one point below many of the public newspapers that now inveigh against them for unconscionable profits.

What we need is a device to permit the oil companies to make a decent profit so that they can do the job they are supposed to be doing. If unreasonable profits are being made, we can easily put on a ceiling across the top and say that above that top figure, any amount made must be put back into production, and not tax them at a confiscatory rate. That would be a more reasonable way to do the job of bringing oil energy into this country, as opposed to the approach we see developing. As my colleague has pointed out, we will be designing failure this way. And once the failure is observed, they will point to them and say, "Aha, see? They failed. Therefore we must nationalize them."

Mr. LONG. To point out further how ridiculous this thing is, in Alaska we made one of the largest finds of oil that we know of anywhere in the free world. We are talking about the North Slope of Alaska, of course. Everybody agrees that the big hope of solving our energy crisis is to be able to bring that oil down here through a pipeline. However, it took us 5 years to pass a bill. Despite the best efforts and the great perseverance of the Senators from Alaska and others we finally got the bill through to bring the oil down from Alaska to a seaport from which it could be shipped to the mainland of the United States.

However, in view of the fact that the oil cannot be marketed at this time, practically none of that Alaskan oil is showing any profit. Assuming that the companies who have leases up in Alaska are showing a profit, I construe this bill to say that unless they can find a way to lose money, every nickel they make will have to be given back. So, why should anyone want to drill a well in Alaska if he is, in fact, going to have to give away his product for no profit whatsoever?

I am aware of the situation in Louisiana where there is a wealthy family which owns a lot of private land. There is a huge amount of oil underneath that land. A great many wells could be drilled there and it could be expected that those wells would produce a great deal of oil.

But the way I read this proposed statute, every dollar they made would have to be given back. They would be giving away their return for nothing. So why should they not do what people are expected to do in a free enterprise economy? Simply sit there and wait until this so-called law expires and when the law expires to proceed to drill their wells. Would they not be idiots not to do that?

All the oil down there belongs to that wealthy family, and to the heirs who went before them, so why should they not just sit there and produce only what they are producing now and forego the opportunity to drill for more oil or produce more until this law expires?

Do not think that laws cannot be that stupid. We have had demonstration of things that are just that stupid under existing laws.

I read an article about a situation in Houston in which a producer who is also a seller of drill pipe was sitting there with enough pipe to drill 300 wells. The Nation desperately needs the production from all 300 wells. We have people who want to drill the 300 wells. But you could not get one link of that pipe. The owners announced that they

were not going to sell another link of pipe until next year. Why? Because under the price control laws, they are limited to a certain profit, and they had already made all the profit they would be permitted to make for last year, 1973. They told everybody—and proceeded to carry it out—that they were not going to sell any more pipe until 1974. So the 300 wells simply were not drilled.

That is a duplication of the economic idiocy that caused the producers of poultry last year to drown all the little chicks, because the producers were not going to be permitted to charge enough for the chickens in order to pay for their feed. So they simply destroyed all the chicks.

We have seen too much of that type of foolishness in the past, and we have seen how difficult it is to repeal some of those bad laws or to amend them.

We should prevent the passage of laws that will make the energy crisis worse. I am persuaded as of now—and until somebody convinces me otherwise, I will remain of this opinion—that if we pass this bill as it stands, it is a bill to make it impossible to find the capital to drill the wells to solve the energy crisis.

Until that time, we will be struggling around with choosing between unsatisfactory answers, between rationing and making people line up for six blocks at the filling stations. In either event, it would be an unsatisfactory answer.

In the hope that by bringing out the the facts the Senate will be fully enlightened on this subject, I will try to provide the Senate with enough information it should have to see that the proposal before us is not workable, is not properly drafted, will not achieve its objective, and is self-defeating, if what we want to do is to provide the Nation with more energy.

If one wants to nationalize the entire industry and wants the public to go without energy or to have a great deal less, then one might be justified in voting for this conference report. Under the circumstances, I think the Senate would be well advised to take enough time to learn what this proposal is, what it would do, how it would work, and how it would not work.

The Senator from Texas made the point that we are told that this law would not go into effect until January 1975. Mr. President, what that proposal says is that it would go into effect in 1975, retroactive to January 1974. It is as though one said that the law goes into effect now, as of January 1974, because that is what the law is, unless you can find the votes to change it.

Mr. President, at a future point, when, hopefully, more Senators will be present to hear it, I will discuss what I believe to be the unwise features of this measure. Meanwhile, I hope very much that the members of the committee will be present tomorrow, and that anyone else who is interested will be present, to inform himself on this measure, in the hope that the Senate can legislate wisely.

Mr. GRAVEL. I ask the Senator whether, in the course of the hearings tomorrow, he might pose the very simple excess profits tax provision introduced at the last hearing, and solicit opinion from these experts, not only as to the the ridiculousness of the present proposal, but also as to the possible acceptability of the other, to demonstrate to

the Senate that the Committee on Finance has been pursuing this problem and is prepared to make recommendations to the body as soon as the House has acted, as is proper in this kind of legislation.

Mr. LONG. I suggest that the Senator ask about that. I hope he will be present tomorrow. I know that he will be present if he can be. The Senator had scheduled hearings on this subject already—that is, on the energy problem—and I invite him to ask the witnesses about this matter.

In my judgment, we have this energy crisis because Congress was not wise. The Executive has not been all that wise, either. But Congress had it within its power to prevent this energy crisis. All we had to do was to provide the energy companies with enough incentive so that they would find it more profitable to produce the energy here than somewhere else, and we would have had all the energy we need. But it was not the wisdom of Congress that we ought to do business that way. Thus we saw Congress vote for laws that made it more profitable to produce the oil in the Near East, in Libya, Algeria, even Venezuela, than here, with the result that the domestic industry has been permitted to deteriorate, while foreign countries have been developed with American money.

Even now, a great number of people in industry find it more profitable to invest their money in the North Sea, drilling for oil, than in the United States. When we make it more profitable to drill for and produce fuel here than over there, we will be on our way to solving the problem.

It is unfortunate that the acts of this Congress and of previous Congresses have been such that it has been more profitable to produce the oil abroad than here. So when the foreign countries organize and get together and say, "You are going to have to pay a fantastic price for the oil or you don't get it," that is how it has to be.

Much as I would wish the House Commerce Committee luck, I do not think they have the power to regulate these foreign countries. If they think they have the power, they will find that there is a good Russian fleet in the Indian Ocean that will change their mind.

We will have to rely upon our own industry, and in order to do that, we will have to have the capacity to produce energy. As long as we pass laws that make it more difficult to build an industry in this country to provide our own requirements of fuel, we are going to be at the mercy of the oil countries. That is one of the lessons we learned last year.

Mr. GRAVEL. I placed in the Record last December statements made by the Senator from Louisiana, who said the same thing 10 and 15 years ago.

As the Senator realizes, it was not the decision of this Congress to make policy that way—whether it was incentives abroad or by controlling gas—which skewed our entire energy picture.

We have heard a great deal about the conspiracy of the oil companies to create scarcity, to jack up the price. I know of only one group that is categorically holding off the market known quantities of oil so that we could see a depression of price as a result of increased supply, and that group happens to be the Congress of the United States. I can cite no better example than Petroleum Reserve No. 4, where there exists 33 to 100 billion barrels of oil. Yet, we see policy formulated on this floor

that puts out a trickle of 7 million, which is a bubble so far as costs in exploration on the North Slope are concerned. Still, even beyond that, we leave it in the hands of the Navy, for some sacrosanct reason, and they sit on a whole pile of oil, which we know exists, which could be drilled, which could be exploited, and which could be placed in the national supply. Then we would have no shortfalls at all today. Yet, they hang onto this oil, under the guise of national defense. We just had a crisis. We were embargoed, and what happened? National defense was served.

The military took all the oil they needed right off the top of the national inventory and left the American people with the remainder. That is as it should be, but it points out the idiocy of holding in reserve crude oil that we know exists, and when the crisis occurs, going to the general supply rather than the special reserve.

So who is the culprit? I say it is Congress and the Navy. I hope the American people will wake up and realize that the oil is there and it is their oil; all they have to do is drill for it. I am talking about hiring the private companies to do it for us. I hope we can bring some intelligence to this matter.

SENATE RESUMPTION OF DEBATE ON FIRST CONFERENCE REPORT ON S. 2589, JANUARY 24, 1974

THE ENERGY EMERGENCY ACT CONFERENCE REPORT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on Tuesday next the time be equally divided, beginning at 12 o'clock noon, between the distinguished Senator from Washington (Mr. Jackson), the chairman of the committee, and the distinguished Senator from Arizona (Mr. Fannin), the ranking Republican member of the committee.

The PRESIDING OFFICER. Without objection, it is ordered.

The text of the unanimous consent agreement is as follows:

Ordered, That the vote on the conference report on S. 2589, the "National Energy Emergency Act of 1973," occur at 4:30 p.m. on Tuesday, January 29, 1974, unless some disposition is made of the conference report by the adoption of some other motion.

Ordered further, That the time between 12 noon and 4:30 p.m. on that day will be equally divided and controlled by the Senator from Washington (Mr. Jackson) and the Senator from Arizona (Mr. Fannin), respectively.

Mr. LONG. Mr. President, during the past several days, the Finance Committee has been conducting hearings on the windfall profits [Sec. 110] aspect of the Energy Emergency Act. It demonstrates what some of us have feared, that the proposal would do a great deal more harm than good. It would be impossible to administer. It would create uncertainty on behalf of all those who wish to invest their money in helping to provide more energy for the country in the area of oil and gas. It would either be repealed before it went into effect or else it would be declared unconstitutional by the Supreme Court of the United States.

Because of the many problems that this matter creates, Mr. President, I believe the Senate should be on notice that it places itself in a very difficult situation for which it will necessarily find a compelling requirement to extricate itself at some future point, if it votes the conference report through with the so-called renegotiation or windfall aspects of the bill as it comes to us.

I ask unanimous consent, Mr. President, to have printed in the Record excerpts from statements from former Commissioners of Internal Revenue, and from men who have served as Under Secretaries in charge of Treasury tax policy, and as counsel for the IRS, as well as a member of the Renegotiation Board.

There being no objection, the excerpts were ordered to be printed in the Record, as follows:

WINDFALL PROFITS HEARINGS EXCERPTS

The Committee on Finance invited former high officials of the Treasury Department, concerned with the administration of tax laws, to testify on a windfall profits tax proposal based on the definition of windfall profits in S. 2589. These

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former officials were asked to comment on the administrative problems which would be created if such a vague standard were enacted, and they were asked, as tax practitioners, what kind of advice they would give a company to which the tax would apply. Excerpts from the testimony of these witnesses is set forth below.

GENERAL COMMENTS

"For reasons discussed before, the proposed 'windfall profits' tax is not a suitable solution: it is erratic and inequitable in application, and complex and costly to manage."—Mortimer Caplin, former Commissioner of IRS.

"I do not believe it feasbile to give adequate guidance to administrative officials, taxpayers or the courts on a subject of such complexity in a statute that is as brief and vague as the one proposed."—Edwin S. Cohen, former Undersecretary of the Treasury for Tax Policy.

"While it is possible to develop a reasonable windfall or excess profits tax applicable to energy companies which preserves and even increases the incentive for development of new energy sources, the form of tax under consideration today is wholly unsatisfactory. Similarly, the recapture of windfall profits by the renegotiation process, as contemplated in section 110 of S. 2589, the proposed Energy Emergency Act, would be an equally poor system. These particular proposals are probably unconstitutional because of their uncertain application. They would greatly discourage new capital investment in energy development because of this extraordinary uncertainty that they would create. Finally, they are totally unadministrable, either through our tax administration structure or the renegotiation process."—John S. Nolan, former Deputy Assistant Secretary of the Treasury.

"In addition to the administrative and litigation problems, enactment of a 'windfall' profits tax presents other serious problems. It seems clear today that we ought to be finding and developing new and greater sources of energy, in other words, encouraging development, exploration, and research. A 'windfall' profits tax certainly will not do this. Instead, it will discourage investment of dollars, effort, and time. Those who otherwise might make significant investments to improve our energy supplies without doubt will be dissuaded to some extent by the 'windfall' profits tax. Even if an energy corporation is willing to do what patriotism suggests, i.e., live with non-windfall profits, the necessity to justify actions will have a chilling effect on corporations. Unquestionably, this will delay needed action—just the opposite of the Nation's critical need."—Johnnie M. Walters, former Commissioner of IRS.

"Finally, the difficulties foreseen in the administration of the proposed excess profits tax pale into insignificance compared with the renegotiation provisions of S. 2589. The excess profits tax would be applied in the first instance by the taxpayer in filing his return. Thereafter, it would be audited by the Internal Revenue Service. Unresolvable differences could end in litigation. Under the renegotiation provisions, however, any purchase of petroleum products could initiate an appeal directly to the Renegotiation Board with no screening processes whatsoever. The Board could be swamped. Its decisions would be subject to judicial review. It seems probable that issues raised in this manner would be tied up in litigation long after the present crisis had subsided and little but confusion would have been contributed to the resolution of the crisis."—Randolph W. Thrower, former Commissioner of IRS.

"In my view, this proposed statute unhappily combines the vagueness of the Renegotiation Act of 1951 (from which the factors enumerated in determining a 'reasonable profit' were derived) with the basic unfairness of a base period income excess profits tax.

"One need only consult the Tax Court reports on Renegotiation cases to see that a 'reasonable profit' is simply a matter of opinion, regardless of how many underlying factors are enumerated."—Crane C. Hauser, former Chief Counsel, IRS.

ADMINISTRATIVE PROBLEMS

"As indicated earlier, what is 'a reasonable profit'? What are reasonable costs? And who can determine satisfactorily the true efficiency of an energy corporation at any time, and particularly during a period of crisis?"

* * * * * * *

"The determination of 'windfall' profits in many cases will not be easy. In fact, only in the simplest of cases will it be easy. For instance, where an 'energy corporation' derives some income from sale of energy products and some from production or sale of other products, it may be difficult, or even impossible, to ascertain what profits, if any, should be subjected to the 'windfall' profits tax. While the accounting profession has developed the specialty of cost accounting, the profession does not acclaim the specialty as a science. At best it is an art, and certainly not one on which to base an 85% tax!

"The kinds of subjective questions the proposed tax will raise (reasonable profit, extent of risk, efficiency, etc.) can only result in serious problems of administration and litigation. * * * Does the provision apply where the corporation generates and uses energy or energy products, without sales to others? And does the restriction of profits to 'reasonable profits' raise a constitutional question? It may."—Johnnie M. Walters, former Commissioner of IRS.

"Such a tax would call for income determinations by product lines, since the products of energy corporations extend far beyond the usual concept of 'energy products', particularly in petrochemicals and chemical and plastic products. Our tax system has never been required to determine taxable income by product lines, and it cannot readily be done. Few, if any, companies have product accounting which would provide profit data according to product lines which coincide with the concept of 'energy products'. Product accounting requires proper *intra*-company pricing between one division and another, as where the oil refining division sells refined products as raw materials to the chemical divisions, a determination which may be extremely difficult to make and is beyond the present scope of our section 482 *inter*-company pricing regulations.

"Since the proposed tax would require such determinations for the past period 1967–1971, both on an industry-wide basis and for each particular taxpayer, as well as for future years, and since such data could not be developed, the tax would not be administrable."—John S. Nolan, former Assistant Secretary of the Treasury.

"In determining a 'reasonable profit' of a particular seller, consideration would have to be given to 'the reasonableness of its costs and profits, with particular regard to the amount and source of capital employed,' 'extent of risk assumed,' 'efficiency and productivity, particularly with regard to cost reduction techniques and economics of operation,' and 'other factors the consideration of which the public interest and fair and equitable dealing may require.' What an awe-inspiring responsibility! Whereas today we have an energy administrator, tomorrow under this proposal the Commissioner of Internal Revenue would become an 'energy industry czar.' "—Mortimer Caplin, former Commissioner of IRS.

"The formula provided in S. 2589 and incorporated in the excess profits tax provision in the press release would seem deficient in several respects including the following:

"1. It is unprecedented in establishing profits of a base period as a maximum standard for current profits. It authorizes the administrator, by referring to a number of vague generalities, to reduce the standard of normalcy provided by the base period. Excess profits tax provisions traditionally have established the base period as a minimum standard, with a possible upward adjustment due to equitable considerations peculiar to the taxpayer or the segment of his particular industry. The factors listed in Paragraph (b)(7) of the proposed windfall profit tax are of the type which should be referred to as a justification, in the public interest or in the interest of treating equitably the taxpayer or seller, for increasing the base period standard rather than reducing it.

"2. The proposed formula is vague and uncertain in referring to 'average profit' of the base period. Does this mean average profit in terms of absolute dollars? This would be determinable for a single operator but not for the entire industry which has a wide range in the size of sellers. Does it then refer to a margin of profit as related to gross sales or units produced as sold as does it refer to return on investment? If all measures are referred to, which would control, the one most favorable to the taxpayer or the least favorable one?"—Randolph Thrower, former Commissioner of IRS.

"As contrasted with the brief 'windfall profits' tax provision being considered by the Committee today, the Korean War excess profits tax—which was drafted with care in the light of the experiences with the World War I and II taxes—contained 35 lengthy sections that were necessitated by the complexity of the subject matter. While the Korean War excess profits tax dealt with substantially all business corporations, whereas the proposed tax would deal only with sales

of 'energy products' by 'energy corporations,' it would seem that most of the same problems would exist in this narrower segments; and they would be compounded by the necessity of determining separately the profits on energy products sold by corporations which are also engaged in the sale of other goods and services. I do not believe it feasible to give adequate guidance to administrative officials, taxpayers or the courts on a subject of such complexity in a statute that is as brief and vague as the one proposed."—Edwin Cohen, former Under Secretary of the Treasury.

"While I do not intend for a minute to depreciate the efforts of the Renegotiation Board, which must, of course, administer the law as it finds it, the lack of any precise rules as to how the various factors enumerated—such as reasonableness of cost and profits, volume of production, net worth, risk, and efficiency—are to be taken into account, make any objective determination of excessiveness of profits virtually impossible to attain. The lack of adequate guidelines for applying and weighing the statutory factors was the subject of criticism in a report by the Comptroller General to the Congress on the Renegotiation Board last May. The Comptroller General said that as a result it was unable to evaluate the reasonableness of the Board's determinations. Even if authority were to be granted to the Renegotiation Board, with its familiarity with such standards to determine excessiveness of profits, it is quite apparent that extended litigation would ensue—just as it has under the Renegotiation Act—before the amount of excessive profits of many companies would finally be determined."—K. Martin Worthy, former Chief Counsel, IRS.

"The single most important element of such a system is a law which a taxpayer can understand and apply to his own affairs—sufficiently clear and well defined to give him distinct pause at the thought of noncompliance. Stated somewhat differently, if the system is to work, a taxpayer ought to be on notice of what would constitute noncompliance. The proposed Windfall Profits Tax is utterly deficient in this respect. It fails to provide a workable premise for self-assessment, even by the most sophisticated corporate taxpayers. By failing to prescribe adequate standards by which even major corporate taxpayers can compute and report their liability, it erodes the very foundation of our tax system, by courting—and perhaps even inviting—massive noncompliance."—Charles W. Davis, former Chief Counsel of IRS.

ADVICE TO ENERGY CLIENTS

"With a 'windfall' profits tax, we can expect two basic approaches by those subject to the tax:

"(1) *Longrun:* To the extent feasible delay actions requiring investments necessary to meet and resolve the energy crisis until the 'windfall' profits tax expires.

"(2) *Shortrun:* Bill and charge conservatively in order to avoid the 'windfall' profits tax in order to avoid controversy and to avoid adverse public relations. (This means investors will keep their funds out of the very corporations needing them to meet and solve the crisis, i.e., the energy corporations will be weakened.)

"Thus, both the short-run and the long-run effect of a 'windfall' profits tax are counter to what the Nation needs, i.e., a great enthusiastic charge to discover and develop new and greater energy sources for the decades ahead."—Johnnie M. Walters, former Commissioner of IRS.

"I would feel obligated to counsel my clients to challenge in court the constitutionality of the statute; to challenge in court the validity of regulations and rulings interpreting its scope and attempting to amplify the statutory factors; and to challenge in court any determination of windfall profits. I would advise my clients and no reliable estimates of profitability or rate of return on investment for new capital expenditures could be made, at least for a number of years until the application of the statute in operation could be determined. In my judgment, this would greatly inhibit new capital investment for the purpose of expanding energy reserves—particularly in such vital projects as recovery of oil reserves from tar sands and oil shale, gasification of coal, use of thermal and steam energy resources, and similar projects."—John E. Nolan, former Assistant Secretary of the Treasury.

"In each instance, judgments would then have to be made on the possible existence of 'windfall profits' and the prudence of making commitments notwithstanding the threat of the 85% penalty tax. Differences of interpretation, and potential controversy and litigation, would always be lurking in the background.

"Until final Treasury regulations were adopted, therefore, lawyers would tend to proceed with extreme caution and would normally prefer to give only tentative advice. Even with final regulations, the statute would not lend itself to clearcut decisions, and advice to clients would in all probability have to contain numerous qualifications.

"In these circumstances, management would undoubtedly proceed with similar caution in making final investment decisions."—Mortimer Caplin, former Commissioner of IRS.

"One must assume that the client has the choice whether or not to risk his investment in an area covered by the excess profits provisions. Additional investment will be determined by the return (perhaps, depending on the definition of 'profits,' including cash throw-off from percentage depletion) on marginal capital invested, not by the overall average return. The 85% tax rate may be too high to leave sufficient capital for reinvestment by petroleum producers. Moreover, the use of base period profits as a maximum return, without regard to inflation, impact of the devaluation of the dollar, extent of new investment or marginal risks in the present emergency, combined with the vast uncertainties of the language, might constitute too great a disincentive to new investment. Ultimately these are questions for economists rather than lawyers, but one would tend to advise a client to look elsewhere for investment opportunities."—Randolph W. Thrower, former Commissioner of IRS.

"At least until appropriate guidelines had been developed and published, it would be most difficult to advise an energy corporation with respect to proposed capital investments. Inability of the companies to ascertain the effect of capital investments under an 85 percent rate would seem to provide a serious deterrent to development of additional production and capacity, which is a prime objective in the energy program."—Edwin Cohen, former Under Secretary of the Treasury.

CONSTITUTIONAL AND OTHER COMMENTS

"Against this background, several conclusions may be drawn. If implemented through the renegotiation process, such a system would probably be unconstitutional. The renegotiation statutes have traditionally provided for recapture of excessive profits on contracts with the Government, principally defense-related. They have not applied to affect dealings wholly between private parties. Their constitutionality was upheld on the basis of the war powers of Congress. *Lichter* v. *United States*, 34 U.S. 742 (1948). Where the Government's interest is far less direct, as where the transactions are wholly between private parties, the proposed system would involve an unconstitutional delegation of Congressional power, or a taking of property without due process of law, because of the vagueness of the statutory standards and concepts."—John S. Nolan, former Assistant Secretary of the Treasury.

"For reasons discussed before, the proposed 'windfall profits' tax is not a suitable solution: it is erratic and inequitable in application, and complex and costly to manage. An alternative approach is called for—either through different new methods of taxation or, perhaps through modification, reduction or elimination of existing tax benefits available today to various elements of the energy industry. In making its decision. Congress clearly will want to procure and consider data on energy inventories, production, costs, reserves, sources of supply, and quantities sold. Undue haste could lead to unwise layering of the Internal Revenue Code with additional complexity."—Mortimer Caplin, former Commissioner of IRS.

"It would seem clear, Mr. Chairman, that the enactment of legislation determining excessive profits in the manner set forth in the proposed legislation before the Committee today would create not only great inequity to many companies—and by the same token, windfalls to others—but also tremendous administrative problems and almost endless litigation, which could be expected to ensue for a long period to come."—K. Martin Worthy, former Chief Counsel, IRS.

"An eminent authority in the field of Federal taxation has observed that 'the excess profits tax is an excescence of crisis. Typically it has been one element in an emergency fiscal program designed for a mobilizing economy." (Mertens, Law of Federal Income Taxation, Introd. V. 6A.) Judges who have been required to consider the provisions of the Excess Profits Tax Act of 1960 have observed that it is perhaps the most intricate and baffling enactment ever to receive Congressional approval. Accordingly, it may be appropriate to evaluate the current

proposed windfall profits tax in the light of the most recent experience of the Congress in the imposition of the Excess Profits Tax Act of 1950.

"Although that law was enacted during a period of approximately 6 weeks, from the beginning of hearings in the House Committee on Ways and Means to its signature by the President, there was a consistent theme expressed by witnesses before the tax writing committees and by committee membership that the standards for computation of excess profits subject to the excess profits tax should be explicitly stated in the statute, with much less reliance upon vague generalities than had been the case under the World War II Excess Profits Tax."—Charles W. Davis, former Chief Counsel of IRS.

Mr. LONG. Mr. President, it would seem to me that the Senate would want to think long and hard about passing into law a provision **[Sec. 110]** which has so many defects and so many shortcomings that the best argument that can be made for it is that if it is passed, it will be so bad that the Senate will find it necessary to act again in this area.

Mr. BENTSEN. Mr. President, earlier this week I stated my opposition to **section 110**, the so-called windfall profits provision, of this bill. I oppose it not because I favor windfall profits for any industry. No industry, no company, no individual should be allowed to make unconscionable profits from the troubles of this country.

But I do not want to see the Congress pass a provision which would fail to accomplish its purpose and would further aggravate the fuel shortage during 1974.

The Finance Committee has just completed 2 days of hearings where former Commissioners of the Internal Revenue Service, former Treasury officials, and the present Deputy Secretary of Treasury and Administrator of the Federal Energy Office told us that whatever the intentions of **section 110**, it is administratively unworkable.

In addition to those very expert witnesses in the tax field, a former general counsel of the Renegotiation Board, which would be responsible for enforcing the provision, testified that the procedure established under **section 110** "defies understanding" and that the windfall profits definition is "impossible." As a former general counsel, who still practices before the Board, he testified the Board has never attempted anything like the determinations contemplated in this provision and has no expertise to do so. He said, and I will quote him directly:

I would hope, Mr. Chairman, that you personally and the Committee generally would prevail upon the Congress and the Senate *not* to accept this, because I think it would be a terrible burden on the Renegotiation Board.

We heard some very harsh judgments on the enforceability of **section 110** of this bill, but frankly those judgments should be obvious to anyone who has read the legislation. **Section 110** provides for separate price determinations for every seller of petroleum products whose profits are challenged by an interested party. I asked the Library of Congress to compile some figures on the number of sellers of petroleum in this country.

There are between 10,000 to 12,000 companies involved in crude oil production, 129 firms managing about 250 refineries, 14,000 petroleum jobbers, 26,000 bulk storage facilities, and 220,000 gas stations, 70 to 80 percent of which are independently owned and operated.

Now I believe we will be doing the citizens of this country and ourselves a great disservice if we pass a provision which calls for one board in Washington to determine individual prices for everyone of 278,000 sellers of petroleum which an "interested party" believes is reaping

windfall profits. The Board would be buried in cases. Complaints would go unheard. And litigation would be endless.

And not only would the windfall profits provision be rendered meaningless, Secretary Simon testified in response to my question, that individually set prices for petroleum sellers would make the whole energy allocation program upon which the entire health of our economy depends impossible to administer.

Too many Americans already believe their Government is unable to deal effectively with the problems we must confront. I believe passing a provision which purports to deal with windfall profits but which even some of the proponents recognize poses problems of this magnitude can only contribute to the current lack of confidence.

In addition to **section 110** failing to accomplish its intended purpose, I am very concerned about the adverse impact of the provision on petroleum production and investment during 1974. The provision is not effective until 1975 but if it does go into effect it will be retroactive to 1974 profits.

As a result of higher crude oil prices, domestic producers are receiving more today for their present level of production than they were during the base period provided in **section 110**. To the extent their costs have not increased as fast as oil prices they are already over the profit margin allowed and for every barrel of increased production they sell this year they will be that much more over the allowed margin. This provision actually prohibits increased production during 1974 for most producers.

While some may argue this provision is so bad that it should be obvious to anyone that it must be repealed and replaced by a more reasonable provision, the companies and individuals involved cannot make that kind of assumption. The former IRS and Treasury officials now in private practice, who testified before our committee, said that no act of Congress can be taken that lightly. A former Commissioner of Internal Revenue testified that he would feel obligated to advise a client not to make any additional investments to increase petroleum production during 1974 which would subject the client to this provision.

Now I believe all of us would have to describe that as a very adverse and unintended result.

And the existence of this provision would not just affect the decision of the companies directly covered by **section 110**. Investors would have to take it into consideration as well.

Independent producers of crude oil drill 75 percent of the wells in unproven areas. A substantial amount of the funds for these new wells are raised from investors outside the petroleum business. The existence of this provision will dry up those outside funds at a time when we need them the most.

I strongly urge that this provision be removed from the bill and that the tax writing committees be allowed the opportunity to draft a reasonable provision which will accomplish the purpose of preventing windfall profits and yet avoid throwing an essential industry into complete turmoil.

I would remind the Senate that the petroleum industry in this country is not all corporate management and investors. There are

thousands of independent businessmen operating production companies, distribution companies, and service stations. There are also over 1 million wage earners employed in this industry. The men and women engaged in crude oil production, refining, and transportation of petroleum products receive over $41/2 billion in wages annually and that is not even counting the 600,000 employees of service stations.

Before we pass legislation to punish a whole industry in our frustration over the energy crisis, I believe we should remember that man working in the oil field for an average wage of $190 a week or in the refinery for $230 a week. These are people whose whole livelihoods depend upon a healthy petroleum industry. And we certainly cannot afford to forget that we all depend upon a healthy petroleum industry for over 70 percent of the energy consumed in this country.

Once again, I urge the Senate to reconsider this provision.

Mr. BELLMON. Mr. President, I rise in opposition to **section 110 of** S. 2589, the so-called windfall-or-excess-profits provision of the Energy Emergency Act.

My opposition stems from my belief that the current energy crisis has been caused by unwise governmental policies and practices and that it will best be solved by the privately owned energy industry. Passage of **section 110** will only prolong the current shortages of energy and delay the day when this Nation will again be substantially self-sufficient in energy and free from the danger of international energy blackmail.

In order for the United States to become self-sufficient in energy, it will be necessary for huge sums of money to be invested searching for and developing new oil and gas reserves, opening of new mines, constructing coal liquefaction and gasification plants, and developing new types of energy sources. Imposition of an excess profits tax would only further impede the development of new sources of fuel by the private sector.

Two questions the country and the Congress must face and solve are: Where does this huge sum of money come from? And will the private sector or the Government be in charge of developing the new energy sources and operating the plants once they are in place?

The adoption of **section 110** of S. 2589 is the first long step down the trail toward the nationalization of the Nation's energy industry. I make this statement because the impact of **section 110** is to make it difficult, if not impossible, for the private energy industry to accumulate the funds and to attract the investments that will be necessary for developing the abundant natural energy resources which this Nation fortunately possesses.

The energy companies are public companies. Any citizen who wants to may buy and own a share in whichever company he feels is most likely to be a good investment. Without these funds, the private sector's ability to develop a solution to the Nation's energy shortage will be seriously and permanently damaged. Lacking new supplies of energy, the consumer will naturally blame the energy industry and sooner or later will begin to insist that the Government move into the vacuum.

When this happens, the American taxpayer will begin to pay the bill and Federal bureaucrats will begin to make the decisions as to

where to drill oil and gas wells, where and when to open coal mines and where to build the energy processing plants.

If experience in other countries means anything at all, the American taxpayer can expect the bureaucracy to fumble the ball as is done in so many other areas. Also the energy consumer can expect to pay a far higher price for his energy than he is now paying or will pay if private investors and private operators continue to be in charge of the energy industry.

Attractive as it may sound to soak the energy companies because of an increased profit due to the Arab embargo of oil, the fact is that this section is totally counterproductive. Someone, either the energy consumer or the taxpayer, must put up the funds needed for a vast expansion of the Nation's energy industry. **Section 110** will not keep this investment from being made. Rather, the impact of this section is to deny to the private sector the funds necessary to expand the Nation's energy output and put the Government in position of beginning to take over this large and vital section of the Nation's economy.

There is no question that the energy industry. and especially oil companies, suffers from an image problem. Many Americans are skeptical about the present shortages of gasoline and other fuels. Even in Oklahoma, a State where thousands of citizens work actively in the petroleum industry, I found during the recent recess that a number of my constituents were not convinced that the energy crisis is real. If Oklahomans who live next door to oil workers and in the shadow of oil and gas wells do not fully understand the energy crisis, it is easy to appreciate the difficulty other Americans have in understanding the complex energy shortage which now faces the country.

There is a widely held belief that the oil industry is a high-profit business. This concept reflects a basic misunderstanding of the industry and an inadequate grasp of the facts about its operations and economics. It confuses total profits with profitability, that is, the rate of return on investment.

Looking at profit in terms of the relationship of earnings to capital invested, oil companies over the last 20 years come in below the average of all manufacturing companies. According to data compiled by the First National City Bank of New York for a large group of oil companies over a 20½ year period—1952–72—the average rate of return on net worth was 11.9 percent, which compares to 12.2 percent for all other manufacturing companies. This so-so record has discouraged investors from making needed capital available for new energy development. Unless the profit picture improves, investors will continue to stay away from the hazardous petroleum business in droves.

Exploration for new oil and gas reserves has declined in recent years primarily because of inadequate incentives. Recently, as profits have increased, this pattern has begun to improve. This improvement will continue so long as the funds for development are available.

Mr. President, during the last decade, the average price of a barrel of crude oil at the wellhead rose about 50 cents, or just over 17 percent. During the same period prices of oil field machinery rose 35 percent, well casing by 46 percent, and the average hourly wages in petroleum production rose 57 percent. In addition, the 1969 tax reform bill in-

cluded a major disincentive to investors when it raised the industry's taxes by more than $500 million a year.

In the case of natural gas, interstate prices are regulated at the wellhead by the Federal Power Commission. This regulation has led to artificially low prices, encouraged overutilization of gas, demoralized the coal industry, and discouraged the search for new supplies of other energy.

Another objection to **section 110** is the vast Government bureaucracy that would be required to administer the complex rules that would be necessary to determine whether windfall profits have been made and then to redistribute those profits. In addition, the recordkeeping which would have to be done by the industry and the inevitable lawsuits that would result would add further to the regulatory nightmare.

In short, the "excess profits" restriction would produce results just the opposite of what is needed to get this country out of its energy mess. It would dampen the incentive of private companies to seek new fuel sources and dry up the capital they need to build new refineries, coal liquification and gasification and oil shale conversion plants.

Fuel prices will not remain high forever if the energy companies are allowed to increase supplies by plowing back profits into developing new energy sources. The free market will quickly increase the supply and bring costs lower.

In many respects, the fuel crisis is similar to the beef shortages of last summer. In that situation, when beef prices rose, consumption eased, the supply increased, and prices dropped. The same thing will happen if energy companies are left unfettered by excessive Government regulations. The price adjustment may take longer because new energy sources cannot be developed overnight. Without attractive profit incentives or under a governmental bureaucracy, these increased supplies will not be forthcoming at all.

Mr. President, the administration and the Congress have the opportunity to take action which will permanently solve the Nation's energy shortage. The course we choose now will have an immense impact upon the economic health and the security of our Nation. I urge that we not choose a short-sighted punitive course but rather that we give the private sector the time and the incentive to do the job. **Section** 110 would be totally counterproductive, and I urge its defeat.

SENATE RECOMMITTAL OF FIRST CONFERENCE REPORT ON S. 2589, JANUARY 29, 1974

NATIONAL ENERGY EMERGENCY ACT OF 1973—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 12 o'clock having arrived, the Senate will now resume the consideration of the conference report on S. 2589 which the clerk will state.

The assistant legislative clerk read as follows:

A report of the committee of conference on the disagreeing votes of the two Houses to the bill (S. 2589) to authorize and direct the President and State and local governments to develop contingency plans for reducing petroleum consumption, and assuring the continuation of vital public services in the event of emergency fuel shortages or severe dislocations in the Nation's fuel distribution system, and for other purposes.

The Senate resumed the consideration of the conference report.

The ACTING PRESIDENT pro tempore. The time between now and 2 p.m. today is to be divided between the distinguished Senator from Washington (Mr. Jackson) and the Senator from Arizona (Mr. Fannin).

Mr. JACKSON. Mr. President, I shall reserve my main statement for a later time this afternoon. At this time I should like to yield to the able Senator from Wisconsin (Mr. Proxmire) who, I believe, wishes to propound some questions.

Mr. PROXMIRE. I thank the distinguished Senator from Washington. I do have some questions to ask but first would like to make a short statement before asking them.

Mr. President, when the energy bill was before the Senate on November 16, it adopted an anti-limousine amendment, which I proposed, by an overwhelming vote of 53 to 16. That amendment did two things.

First, it reduced the number of chauffeur driven limousines and heavy and medium sedans from over 800 to about 27. Only the President, Vice President, Members of the Cabinet, the Chief Justice, and a handful of "elected" officials of the Congress were provided individual cars.

Second, my amendment provided that except for these 27 or so officials, no Government car could be used to chauffeur Government officials to and from their home. This is already the law—title 31 section 638a restricts the use of all Government cars to "official purposes" and explicitly states that official purposes shall not include driving officials to and from home. The only exceptions to that rule—except for doctors and officials in remote areas—are Members of the President's Cabinet, period.

Now that the energy crisis is with us, this is an important item. Driving an official to and from home doubles the mileage.

If he drives himself, he drives in and drives home. If he is chauffered the car makes two daily round trips—out and back in the morning and out and back in the evening. Further, hearings I held indicate that chauffeurs cost from $14,000 to $17,000 a year. So it is time we made this law stick.

When the bill got to conference, the Senate conferees accepted the House language.

But I am here to tell the Senate and the managers of the bill, that they bought in a pig in a poke. The final version they brought back to the Senate is a farce. The House and the bureaucrats took them for a cleaning. In fact, under the final version, there could even be an increase in the more than 800 limousines provided Government officials. Here is why. And here is why the provision is a farce. **[Sec. 117.]**

First, the House version affects only class 6 vehicles. These are the big Fleetwood Cadillacs of 5,500 pounds or more. But the only officials in the executive branch who have class 6 vehicles—the President, the Cabinet, and some ambassadors in class I diplomatic posts—are those whom the amendment exempts from its provisions. So, the amendment outlaws class 6 vehicles but allows everyone in the executive branch with a class 6 Fleetwood Cadillac to keep it.

Second, the 775 or so officials who are now chauffeured around in heavy—class V—and medium—class IV—sedans are not touched. The under secretaries, the assistant secretaries, about 100 of the Pentagon brass, consulars and aid mission officials abroad, and the heads of such obscure agencies as the Battle Monument Commission, the Foreign Claims Settlement Commission, and the Railroad Retirement Board legally keep their chauffeured cars. These class V and class IV vehicles include Lincoln Continentals, Chrysler Imperials, Mercury Marquis, Chrysler New Yorkers and Newports, Buick Electras, and Mercury Montereys. These are not touched by the final version of the amendment.

Third, under present regulations, only a limited number of class I diplomats get Cadillac Fleetwoods. Under the energy bill conference report, the number is legally increased to any diplomat the Secretary of State designates. This is why there can be an increase in the actual number of limousines under the final provision.

Fourth, the legislative and judicial branches are exempted altogether. I am not against the Vice President, the Speaker of the House, and the majority leaders and whips of the House and Senate having cars. But I am against some 20 or more congressional staff or legislative agency heads having a chauffeured limousine provided them. That practice continues under the final version.

Fifth, the anti-limousine amendment in the conference report does nothing about the chauffeurs for some 775 big cars. Hearings I held indicate that routinely chauffeurs earn $14,000 to $17,000 a year including overtime. My amendment banned them for all but the 27 or so major officials. Under the final version, at least 775 Government officials will still be driven around in chauffeured limousines.

Sixth, the conference report language does nothing about the illegal practice of driving officials to and from home. The public does not understand, and rightly so, why a member of the Home Loan

Bank Board or the Chief Counsel of HUD cannot drive himself to and from work.

The amendment is worse than useless. It pretends to do something while doing nothing at all. In fact, because of the diplomatic exemption, it could make matters worse.

There is a great credibility gap in the country about the actions of Government. When the Congress passes a so-called antilimousine amendment which does nothing about limousines, that increases the credibility gap.

It would be wiser to kill the entire amendment than to try to fool the American people.

Of course the President may take action on his own. But once the present energy crisis is over or there is a change in administration, the bureaucrats will be back again, fighting tooth and toenail to keep their gas guzzling status symbols.

What we need is a law, not regulations, to do the job. The antilimousine amendment in the energy bill is a farce.

I would like to ask the manager of the bill some questions. There are two possible circumstances—namely, the bill or conference report may pass or it may be sent back to the conference committee.

First, if the bill does not go back to the conference committee does the Senator from Washington agree that it is now mandatory on the executive branch of the Government to enforce title 31, section 638a, which outlaws the use of limousines, heavy and medium sedans, and in fact all Government cars with minor exceptions for the Cabinet, doctors, and remote employees, from being used to drive officials to and from home?

Mr. JACKSON. That is the existing law, which came into being as a result of the legislative effort, outstanding effort, of the Senator from Wisconsin. That is the law. This will not change it. That will apply, as I interpret the language in the conference report.

Mr. PROXMIRE. I thank the Senator very much. As he knows, unfortunately, that law has not been enforced. Even the White House staff does not abide by the law.

Mr. JACKSON. The Senator knows that I voted with him on every one of these proposals, including the one adopted by the Senate.

Mr. PROXMIRE. Indeed, the Senator did, and I am grateful for that.

I ask the Senator if he agrees that the legislative history of this bill and this amendment means that title I, section 638(a) as modified only by title V, section 101, must be strictly interpreted?

Mr. JACKSON. The Senator is correct. If it is not being enforced, it certainly should be enforced, and I will back the Senator in any and all efforts to achieve effective enforcement of existing law.

Mr. PROXMIRE. I thank the Senator. I have other questions.

Mr. JACKSON. May I just respond in general by saying that we tried very hard in conference to sustain the Senate's point of view. We got no support from the House side.

As the Senator knows, the White House was very active in its opposition to the Proxmire amendment. We did everything we could to make the Senate position prevail; because I agree with the Senator from Wisconsin that, at a time we are asking that sacrifices in one form or another, be made by more than 200 million Americans, in

order to meet this energy crisis, the least we can do is to set an example at the Federal level of government.

Mr. PROXMIRE. As the Senator knows, when the House, as a whole, had a chance to act on a similar amendment to the HUD appropriation bill, they came very close to supporting the position taken by the Senate in knocking out all limousines for HUD, except for the Secretary, himself.

Mr. JACKSON. The Senator is correct.

Mr. PROXMIRE. That was over the opposition of the leadership.

The second question deals with the alternative possibility. If this bill is recommitted to the conference committee, will the Senator do his best to do three things?

First, instead of limiting the prohibition for cars through class VI Fleetwood Cadillacs, will he also define the cars to be prohibited to class V and class IV vehicles?

Mr. JACKSON. I think that is a reasonable request. The chairman of the committee, the junior Senator from Washington, will do everything he can to achieve that, if it goes back to conference.

I must say that if the bill is recommitted to conference, as proposed here, I am afraid it may be dead, period.

Mr. PROXMIRE. Will the Senator work to write into the amendment a provision calling on the executive branch to enforce title 31, section 638(a)?

Mr. JACKSON. If it is within the power of the conference, and I think it should be, because it is relevant, unless some point of order is made, I would strongly support appropriate language calling upon the executive branch to implement the existing law, pointing out that as outlined by the distinguished Senator from Wisconsin the law has not been enforced.

Mr. PROXMIRE. I realize that the Senator was up against it in a complicated bill which was extremely hard to handle. I think he has done a marvelous job, a great job for the country as well as for the Senate, in handling the energy situation.

I hope the Senator will raise the issue with the House, to seek to have the provisions of the Senate bill apply.

These chauffeurs cost a great deal of money—$14,000 to $17,000 a year. As we know, the average family in this country earns $11,000 a year. To ask them to subsidize cars and chauffeurs for Government officials, servants of the people, making four to six times as much, does not seem to be fair or logical at this time.

The Senate provisions outlawed giving the head of the Battle Monuments Commission or the Chairman of the Commission on the Ryukyu Islands a chauffeur-driven limousine. Will the Senator fight for the Senate position if the bill is sent back to conference?

Mr. JACKSON. I certainly will.

I drive a 1961 Chevrolet to and from work every day, and I think that is a sufficient clue as to how I feel about someone passing me with a chauffeur, some bureaucrat, who even has a light in the back of the car and is reading the paper. I do not even get a chance to read a paper, except on weekends, if we are lucky enough to get off. I want to make that disclosure so that the Senator will fully understand the sincerity of my point of view. I get sick, seeing some of these characters in this town driving around in that manner.

Mr. PROXMIRE. May I say to the Senator that I appreciate that very much, recognizing that his car is 14 years old—a 1972—Chevy——

Mr. JACKSON. 1961. It is an Impala.

Mr. PROXMIRE. However old it is, I hope the Senator will forgive me if I speed past him as I run to work. [Laughter.]

Mr. ROBERT C. BYRD. Mr. President, may we have order in the galleries and in the Chamber?

The PRESIDING OFFICER. The Senate will be in order. The galleries will refrain from outbursts.

Mr. JACKSON. Mr. President, I shall not endeavor to compete with the Senator from Wisconsin in the art of jogging. I think he has the best possible franchise on that. I do that in the Senate gym every night—as long as we do not outlaw that. I swim my half mile every day. That is not as good as—how many miles?

Mr. PROXMIRE. Five in and five out.

Mr. JACKSON. Just think of the gas the Senator is saving. We reserve it for the Senate.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may be permitted to speak out of order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, for the purpose of knowing precisely what the rules and precedents require, we are operating on controlled time now. Am I required to ask unanimous consent that I be permitted to speak, having been yielded time, on a subject that is not germane to the pending conference report?

The PRESIDING OFFICER. Under the precedents as ruled by the Chair, the Chair does not take the initiative to enforce the rule of germaneness of debate, but any Senator could invoke the rule by calling for the regular order. Therefore, it would appear that the Senator correctly get unanimous consent to speak out of order since another Senator could invoke the rule against him unless he had obtained unanimous consent.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. JACKSON. Yes, I will be delighted to yield.

Mr. ALLEN. Mr. President, I read from Senate Conference Report No. 93–663, page 45: **[Sec. 104]**

Does this language mean that the intent of the conferees is to accommodate the do-it-yourself movement of both people and their personal possessions from one job site to another during these times of national stress, when jobs in the country are either opening up or closing down and people may be very mobile, seeking better opportunities or greater economic security?

Mr. JACKSON. Mr. President, the needs of the armed services necessitate the periodic reassignment of personnel and the transport of these personnel, their families, and their household goods from one duty station to the next. In addition, we Americans are a very mobile people. The family move from one city to another in search for new or better employment is probably more common here than in any other nation. It is a routine facet of our society and of our economy. In incorporating in the conference report the passage which my esteemed colleague has cited, it is the intent of the conferees to acknowledge those two facts.

Furthermore, it is their intent that, insofar as it may be possible, and consistent with the other provisions of this act and of the Emergency Petroleum Act of 1973, end use rationing plans should be so developed as not to unduly inhibit this normal movement of people and their personal possessions be it by van line or by hired vehicle. [Sec. 104.]

Mr. ALLEN. I thank my colleague for this clarification.

I am pleased that such is the intent of the conferees for unless we provide the fuel for a person to move himself, his family, and personal household possessions to his place of employment, we have, for the first time in our Nation's history, effectively prevented him from getting to employment. His family will be living on the unemployment compensation provided in this bill instead of being the useful, productive family it would like to be. Fuel is the lifeblood of a man's mobility to get to employment. Without it, he is confined to the area and can become a financial burden to the State.

I would like to compliment the managers for their attention to the needs of our Nation's physically handicapped persons which I find in the conferees' report on page 45 and for their attention to the needs of families who must face the psychic and monetary traumas that are connected with moving from one locality to another while finding new jobs or other kinds of employment during this time of crisis.

However, under the most recent regulations as set forth in the Federal Register of Tuesday, January 15, 1974, volume 39, No. 10, part III there are certain allocations for users of gasoline at page 1944. The servicemen and other people using do-it-yourself moving methods are not included. Their only recourse would be to apply to the State under the set-aside provisions. The State in turn must justify the hardship application to the appropriate Federal office. This would compound the problems of the 1-out-of-5 families who are relocating for employment purposes.

No group of people in the economy feel these economic adjustment pressures so acutely as the young unmarrieds, young couples, and younger families with school-age children. Theirs is the age group that has the lowest job stability, rising needs, and limited savings. This group provides the primary "customer" for the do-it-yourself household moving industry. All the features that make do-it-yourself moving attractive, appeal to these younger individuals and families. It should be a matter of national concern that this mobile, educated, eager, creative segment of our populace be able to carry out considered decisions on where to live to best meet the economic and social demands of their era.

Family moving is rarely undertaken lightly—it is a difficult experience involving large psychic costs as well as considerable monetary expenditures.

Each year 1 family in 5 will move. In 1973, 12.5 million families moved, or 18.7 percent of the Nation's 66,890,000 households. 46.8 percent of these household moves utilized do-it-yourself moving equipment. Lower-income families have no other viable alternative except to liquidate their household belongings.

Families have to move. Nearly 75 percent of one-way do-it-yourself moves are directly employment-related:

Ten percent unemployed, seeking a job.

Fourteen percent being transferred by current employer.

Thirty-one percent accepting new employment opportunity.

Twenty percent entering, leaving or being transferred by the military.

The balance includes moves for reasons of health, education opportunities, change of marital status, retirement, voluntary and involuntary housing change, and others.

These are essential, purposeful, nonrecreational moves for both the individual and the Nation.

The expected displacement of people due to the energy crisis will further intensify the need for mobility to where the jobs are, and the need for an economic, flexible system of household moving. But when a family must set out for a destination hundreds or even thousands of miles away, they should have assurance that they will not become stranded enroute in an unfamiliar area due to lack of fuel.

The do-it-yourself household moving industry is unique in that its vehicles are gasoline-powered, in that the consumer purchases the gasoline himself at retail and at several successive independent service stations along the route to his destination.

The group we are talking about consists of heads of households in the age bracket of from 25 to 44 years of age, young marrieds or families with small children. It is a unique group. It is free enterprise in operation.

Those with sufficient financial resources generally choose among van lines, a rental truck, and a large trailer for household moving. Their primary considerations are the cost savings of the rental equipment versus their time and effort to pack, load, drive, unload, and unpack. Dollar savings average about $340 on an average 490-mile move when truck rental equipment is used; on the average, a 63.4-percent savings.

Although the services provided are different and the out-of-pocket costs to the consumer vary considerably, competition between the van lines and the do-it-yourself household moving industry is stiff. The do-it-yourself household moving industry must price considerably below the van lines to offer sufficient savings to a person moving his household belongings to induce him to choose to rent a truck or trailer. Competition within the industry is also severe, and even within individual corporations smaller rental trucks compete with larger rental trailers.

Potential customers in the lower-income brackets tend to choose between a small rental trailer and the alternative of disposing of excess—more than a car load—of personal goods. They usually decide by comparing the value of those goods with the cost of the trailer rental. This effectively limits the rates the do-it-yourself moving industry can charge for small trailers. The resulting pricing limitations, taken in toto, represent free enterprise operating at its best.

This consumer group—using do-it-yourself equipment—should be differentiated from the moving van industry, and from the commercial truck and general car leasing industry, most of which is covered under the regulated carrier section—**section 113** of the bill reported by the conferees.

My concern is that the conferees intent be, as expressed on page 45 of the report in the aforementioned paragraph, clearly brought to the Federal Energy Office and that this be enforced as it is not now in the

allocation regulations or the proposed gasoline rationing plan of January 16, 1974.

Mr. FANNIN. Mr. President, we have a conference report on S. 2589 pending before the Senate today. I would like to discuss the conference report, principally one section. I will have more complete remarks to make at a later time. At this time, however, I would like to cover the section of this legislation which is referred to as windfall profits.

The Committee on Finance invited former high officials of the Treasury Department, concerned with the administration of tax laws, to testify on a windfall profits tax proposal based on the definition of windfall profits **[Sec. 110]** in S. 2589. These former officials were asked to comment on the administrative problems which would be created if such a vague standard were enacted, and they were asked, as tax practioners, what kind of advice they would give a company to which the tax would apply. Excerpts from the testimony of these witnesses is set forth below:

Former Commissioner Mortimer Caplin of the IRS had this to say:

For reasons discussed before, the proposed "windfall profits" tax is not a suitable solution: it is erratic and inequitable in application, and complex and costly to manage.

We then have the testimony of Edwin S. Cohen, former Under Secretary of the Treasury for Tax Policy, who said:

I do not believe it feasible to give adequate guidance to administrative officials, taxpayers or the courts on a subject of such complexity in a statute that is as brief and vague as the one proposed.

John S. Nolan, former Deputy Assistant Secretary of the Treasury, testified:

While it is possible to develop a reasonable windfall or excess profits tax applicable to energy companies which preserves and even increases the incentive for development of new energy sources, this form of tax under consideration today is wholly unsatisfactory. Similarly, the recapture of windfall profits by the renegotiation process, as contemplated in section 110 of S. 2589, the proposed Energy Emergency Act, would be an equally poor system. These particular proposals are probably unconstitutional because of their uncertain application. They would greatly discourage new capital investment in energy development because of this extraordinary uncertainty that they would create. Finally, they are totally unadministrable, either through our tax administration structure or the renegotiation process.

Mr. Johnnie M. Walters, former Commissioner of the IRS, had this to say:

In addition to the administrative and litigation problems, enactment of a "windfall" profits tax presents other serious problems. It seems clear today that we ought to be finding and developing new and greater sources of energy, in other words, encouraging developments, exploration, and research. A "windfall" profits tax certainly will not do this. Instead, it will discourage investment of dollars, effort, and time. Those who otherwise might make significant investments to improve our energy supplies without doubt will be dissuaded to some extent by the "windfall" profits tax. Even if an energy corporation is willing to do what patriotism suggests, i.e., live with non-windfall profits, the necessity to justify actions will have a chilling effect on corporations. Unquestionably, this will delay needed action—just the opposite of the Nation's critical need.

Former IRS Commissioner Randolph W. Thrower had this to say:

Finally, the difficulties foreseen in the administration of the proposed excess profits tax pale into insignifiance compared with the renegotiation provisions of S. 2589. The excess profits tax would be applied in the first instance by the

taxpayer in filing his return. Thereafter, it would be audited by the Internal Revenue Service. Unresolvable differences could end in litigation. Under the renegotiation provisions, however, any purchase of petroleum products could initiate an appeal directly to the Renegotiation Board with no screening processes whatsoever. The Board could be swamped. Its decisions would be subject to judicial review. It seems probable that issues raised in this manner would be tied up in litigation long after the present crisis had subsided and little but confusion would have been contributed to the resolution of the crisis.

The following are statements made by professionals in this field:

Crane C. Hauser, a former Chief Counsel of the Internal Revenue Service said:

In my view, this proposed statute unhappily combines the vagueness of the Renegotiation Act of 1951 (from which the factors enumerated in determining a "reasonable profit" were derived) with the basic unfairness of a base period income excess profits tax.

One need only consult the Tax Court reports on Renegotiation cases to see that a "reasonable profit" is simply a matter of opinion, regardless of how many underlying factors are enumerated.

ADMINISTRATIVE PROBLEMS

Johnnie M. Walters, a former Commissioner of the IRS, said:

As indicated earlier, what is "a reasonable profit"? What are reasonable costs? And who can determine satisfactorily the true efficiency of an energy corporation at any time, and particularly during a period of crises?

The determination of "windfall" profits in many cases will not be easy. In fact, only in the simplest of cases will it be easy. For instance, where an "energy corporation" derives some income from sale of energy products and some from production or sale of other products, it may be difficult, or even impossible, to ascertain what profits, if any, should be subjected to the "windfall" profits tax. While the accounting profession has developed the specialty of cost accounting, the profession does not acclaim the specialty as a science. At best it is an art, and certainly not one on which to base an 85% tax!

The kinds of subjective questions the proposed tax will raise (reasonable profit, extent of risk, efficiency, etc.) can only result in serious problems of administration and litigation. * * * Does the provision apply where the corporation generates and uses energy or energy products, without sales to others? And does the restriction of profits to "reasonable profits raise a constitutional question? It may.

John S. Noland, former Assistant Secretary of the Treasury, said:

Such a tax would call for income determinations by product lines, since the products of energy corporations extend far beyond the usual concept of "energy products," particularly in petrochemicals and chemical and plastic products. Our tax system has never been required to determine taxable income by product lines, and it cannot readily be done. Few, if any, companies have product accounting which would provide profit data according to product lines which coincide with the concept of "energy products." Product accounting requires proper *intra*-company pricing between one division and another, as where the oil refining division sells refined products as raw materials to the chemical division, a determination which may be extremely difficult to make and is beyond the present scope of our section 482 *inter*-company pricing regulations.

Since the proposed tax would require such determinations for the past period 1967–1971, both on an industry-wide basis and for each particular taxpayer, as well as for future years, and since such data could not be developed, the tax would not be administrable.

Mortimer Caplin, also a former Commissioner of IRS, made this statement:

In determining "reasonable profit" of a particular seller, consideration would have to be given to the reasonableness of its costs and profits, with particular

regard to the amount and source of capital employed, "extent of risk assumed," "efficiency and productivity, particularly with regard to cost reduction techniques and economics of operation," and "other factors the consideration of which the public interest and fair and equitable dealing may require." What an awe-inspiring responsibility! Whereas today we have an energy administrator, tomorrow under this proposal the Commissioner of Internal Revenue would become an "energy industry czar."

This is the statement of Randolph Thrower, another former Commissioner of IRS:

The formula provided in S. 2589 and incorporated in the excess profits tax provision in the press release would seem deficient in several respects including the following:

1. It is unprecedented in establishing profits of a base period as a maximum standard for current profits. It authorizes the administrator, by referring to a number of vague generalities, to reduce the standard of normalcy provided by the base period. Excess profits tax provisions traditionally have established the base period as a minimum standard, with a possible upward adjustment due to equitable considerations peculiar to the taxpayer or the segment of his particular industry. The factors listed in Paragraph (b)(2) of the proposed windfall profit tax are of the type which should be referred to as a justification, in the public interest or in the interest of treating equitably the taxpayer or seller, for increasing the base period standard rather than reducing it.

2. The proposed formula is vague and uncertain in referring to "average profit" of the base period. Does this mean average profit in terms of absolute dollars? This would be determinable for a single operator but not for the entire industry which has a wide range in the size of sellers. Does it then refer to a margin of profit as related to gross sales or units produced or sold or does it refer to return on investment? If all measures are referred to, which would control, the one most favorable to the taxpayer or the least favorable one?

Mr. FANNIN. I thank the Chair.

Senators will understand that I am quoting from men who have great expertise in this field. In most instances they favor an excess profits tax, but, in these remarks they are commenting on the stipulations in the conference report on S. 2589.

Mr. President, to continue with my statement regarding the windfall profits and the hearings excerpts I would like to quote from the testimony of Edwin Cohen:

As contrasted with the brief "windfall profits" tax provision being considered by the Committee today, the Korean War excess profits tax—which was drafted with care in the light of the experiences with the World War I and II taxes—contained 35 lengthy sections that were necessitated by the complexity of the subject matter. While the Korean War excess profits tax dealt with substantially all business corporations, whereas the proposed tax would deal only with sales of "energy products" by "energy corporation," it would seem that most of the same problems would exist in this narrower segment; and they would be compounded by the necessity of determining separately the profits on energy products sold by corporations which are also engaged in the sale of other goods and services. I do not believe it feasible to give adequate guidance to administrative officials, taxpayers or the courts on a subject of such complexity in a statute that is a brief and vague as the one proposed.

Then Mr. K. Martin Worthy, a former Chief Counsel at IRS, testified:

While I do not intend for a minute to depreciate the efforts of the Renegotiation Board, which must, of course, administer the law as it finds it, the lack of any precise rules as to how the various factors enumerated—such as reasonableness of cost and profits, volume of production, net worth, risk, and efficiency—are to be taken into account, make any objective determination of excessiveness of profits virtually impossible to attain. The lack of adequate guidelines for applying and weighing the statutory factors was the subject of criticism in a report by the Comptroller General to the Congress on the Renegotiation Board

last May. The Comptroller General said that as a result it was unable to evaluate the reasonableness of the Board's determinations. Even if authority were to be granted to the Renegotiation Board, with its familiarity with such standards to determine excessiveness of profits, it is quite apparent that extended litigation would ensue—just as it has under the Renegotiation Act—before the amount of excessive profits of many companies would finally be determined.

Charles W. Davis, former Chief Counsel of IRS, had this to say:

The single most important element of such a sytsem is a law which a taxpayer can understand and apply to his own affairs—sufficiently clear and well defined to give him distinct pause at the thought of noncompliance. Stated somewhat differently, if the system is to work, a taxpayer ought to be on notice of what would constitute noncompliance. The proposed Windfall Profits Tax is utterly deficient in this respect. It fails to provide a workable premise for self assessment, even by the most sophisticated corporate taxpayers. By failing to prescribe adequate standards by which even major corporate taxpayers can compute and report their liability, it erodes the very foundation of our tax system, by courting—and perhaps even inviting—massive noncompliance.

Johnnie M. Walters, the former Commissioner of IRS, whom I have quoted before, had these additional comments:

With a "windfall" profits tax, we can expect two basic approaches by those subject to the tax:

(1) Longrun: To the extent feasible delay actions requiring investments necessary to meet and resolve the energy crisis until the "windfall" profits tax expires.

(2) Shortrun: Bill and charge conservatively in order to avoid the "windfall" profits tax in order to avoid controversy and to avoid adverse public relations. (This means investors will keep their funds out of the very corporations needing them to meet and solve the crisis, i.e., the energy corporations will be weakened.)

Thus, both the short-run and the long-run effect of a "windfall" profits tax are counter to what the Nation needs, i.e., a great enthusiastic charge to discover and develop new and greater energy sources for the decades ahead.

Mr. President, I commend that statement. I know that Johnnie M. Walters is very familiar with the mandate that was given by the Senate to the oil companies of this Nation. Many of those companies are independents, and must have the ability to raise the funds for exploration. That is why Mr. Walters was so concerned about the effects of this legislation.

Then John E. Nolan, whom I have quoted before, a former Assistant Secretary of the Treasury, had the following comments on this particular provision of the conference report:

I would feel obligated to counsel my clients to challenge in court the constitutionality of the statute; to challenge in court the validity of regulations and rulings interpreting its scope and attempting to amplify the statutory factors; and to challenge in court any determination of windfall profits. I would advise my clients that no reliable estimates of profitability or rate of return on investment for new capital expenditures could be made, at least for a number of years until the application of the statute in operation could be determined. In my judgment, this would greatly inhibit new capital investment for the purpose of expanding energy reserves—particularly in such vital projects as recovery of oil reserves from tar sands and oil shale, gasification of coal, use of thermal and steam energy resources, and similar projects.

Mr. President, I shall continue to quote from the testimony given, because I think it is essential in explaining the widespread opposition to this conference report. It is absolutely unworkable. It could result in a great burden upon the companies, but more importantly, it would result in a dimunition of the efforts toward exploration and development of our resources, and this, of course, could be disastrous in the years ahead.

Mortimer Caplin, the former Commissioner of IRS, had this to say:

In each instance, judgments would then have to be made on the possible existence of "windfall profits" and the prudence of making commitments notwithstanding the threat of the 85% penalty tax. Differences of interpretation, and potential controversy and litigation, would always be lurking in the background.

Until final Treasury regulations were adopted, therefore, lawyers would tend to proceed with extreme caution and would normally prefer to give only tentative advice. Even with final regulations, the statute would not lend itself to clearcut decisions, and advice to clients would in all probability have to contain numerous qualifications.

In these circumstances, management would undoubtedly proceed with similar caution in making final investment decisions.

Mr. President, I further quote Randolph W. Thrower's testimony—another former Commissioner of the IRS—as follows:

One must assume that the client has the choice whether or not to risk his investment in an area covered by the excess profits provisions. Additional investment will be determined by the return (perhaps, depending on the definition of "profits," including cash throw-off from percentage depletion) on marginal capital invested, not by the overall average return. The 85% tax rate may be too high to leave sufficient capital for reinvestment by petroleum producers. Moreover, the use of base period profits as a maximum return, without regard to inflation, impact of the devaluation of the dollar, extent of new investment or marginal risks in the present emergency, combined with the vast uncertainties of the language, might constitute too great a disincentive to new investment. Ultimately these are questions for economists rather than lawyers, but one would tend to advise a client to look elsewhere for investment opportunities.

Mr. President, I have quoted several former IRS commissioners, and now I should like to quote another excerpt from Edwin Cohen, former Under Secretary of the Treasury:

At least until appropriate guidelines had been developed and published, it would be most difficult to advise an energy corporation with respect to proposed capital investments. Inability of the companies to ascertain the effect of capital investments under an 85 percent rate would seem to provide a serious deterrent to development of additional production and capacity, which is a prime objective in the energy program.

Another statement that was made during the hearings on the constitutionality of this particular amendment by John S. Nolan, former Assistant Secretary of the Treasury reads as follows:

Against this background, several conclusions may be drawn. If implemented through the renegotiation process, such a system would probably be unconstitutional. The renegotiation statutes have traditionally provided for recapture of excessive profits on contracts with the Government, principally defense-related. They have not applied to affect dealings wholly between private parties. Their constitutionality was upheld on the basis of the war powers of Congress. *Lichter* v. *United States*, 334 U.S. 742 (1948). Where the Government's interests is far less direct, as where the transactions are wholly between private parties, the proposed system would involve an unconstitutional delegation of Congressional power, or a taking of property without due process of law, because of the vagueness of the statutory standards and concepts.

Now another quote on the same subject of constitutionality from Mortimer Caplin, former Commissioner of the IRS:

For reasons discussed before, the proposed "windfall profits" tax is not a suitable solution: it is erratic inequitable in application, and complex and costly to manage. An alternative approach is called for—either through different new methods of taxation or, perhaps through modification, reduction or elimination of existing tax benefits available today to various elements of the energy industry. In making its decision, Congress clearly will want to procure and consider data on energy inventories, production, costs, reserves, sources of supply, and quantities sold. Undue haste could lead to unwise layering of the Internal Revenue Code with additional complexity.

Now a quote from K. Martin Worthy, former Chief Counsel of the IRS:

It would seem clear, Mr. Chairman, that the enactment of legislation determining excessive profits in the manner set forth in the proposed legislation before the Committee today would create not only great inequity to many companies—and by the same token, windfalls to others—but also tremendous administrative problems and almost endless litigation, which could be expected to ensue for a long period to come.

Let me quote Charles W. Davis, former Chief Counsel of the IRS:

An eminent authority in the field of Federal taxation has observed that "the excess profits tax is in excrescence of crisis. Typically it has been one element in an emergency fiscal program designed for a mobilizing economy." (Mertens, Law of Federal Income Taxation, Introd. V. 6A) Judges who have been required to consider the provisions of the Excess Profits Tax Act of 1950 have observed that it is perhaps the most intricate and baffling enactment ever to receive Congressional approval. Accordingly, it may be appropriate to evaluate the current proposed windfall profits tax in the light of the most recent experience of the Congress in the imposition of the Excess Profits Tax Act of 1950.

Although that law was enacted during a period of approximately 6 weeks, from the beginning of hearings in the House Committee on Ways and Means to its signature by the President, there was a consistent theme expressed by witnesses before the tax writing committees and by committee membership that the standards for computation of excess profits subject to the excess profits tax should be explicitly stated in the statute, with much less reliance upon vague generalities than had been the case under the World War II Excess Profits Tax.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be taken from both sides.

The Presiding Officer. Without objection, it is so ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. Fannin. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordered.

Mr. Fannin. Mr. President, I have touched on the windfall profits matter only, but this is just one of 13 major infirmities in the bill. Let me enumerate the sections for the record.

Section 103 needs to be corrected.

Section 105 congressional review, has its limitations and certainly needs correction.

Section 107, contingency plans, is also faulty.

I have covered the windfall rebates, on which I have gone into detail.

Section 112, standards for allocation, certainly needs reconsideration.

The antitrust section is faulty and is very much in need of correction. **[Sec. 114.]**

The exports controls section is unclear and not explicit. **[Sec. 115.]**

The unemployment provision section would be of tremendous cost without hearings giving full consideration to determining what would be involved. **[Sec. 116.]**

The car pool section is one that also presents problems. **[Sec. 117.]**

The judicial review section has been questioned by a number of my colleagues.

There are questions on the air quality section to be brought up this afternoon. **[Title II.]**

The special interest section on mass transit subsidy is another matter that must be reconsidered.

Mr. President, I want to make it clear that my objection to this legislation is not on one item alone. We do need an excess profits bill; the Senate Finance Committee and the Ways and Means Committee of the House will be working on such a bill. The FEA Organization bill has already passed the Senate, and the House will consider its version next week.

I feel that these separate energy measures are superior to the corresponding provisions of the conference report, which, as I stated earlier, was hastily drafted and heavily amended in the closing days of the session.

Mr. President, this is no time for Congress to act irresponsibly. We must accept the responsibility and provide the administration with adequate legislation to manage the problems they face in this emergency. We are on the road to accomplishing the objective of dealing with our energy situation. I believe the conference report should be defeated.

Mr. FANNIN. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be charged equally against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. MUSKIE. Mr. President, I yield myself such time as I may need.

Mr. President, in view of the limited time for the debate on the motion to recommit, it seems to me it might be useful to the Senate and for the Record if I began the discussion of the issues in a preliminary way before the hour of 2 o'clock, when the motion to recommit will be offered.

I was a member of the conference, as a representative of the Public Works Committee, together with the distinguished Senator from West Virginia, the chairman of the Public Works Committee (Mr. Randolph), and the distinguished Senator from Tennessee (Mr. Baker). Our special responsibility in the conference had to do with the issues involving environmental legislation which ultimately found their way into the conference report. Because that is a technical subject, I thought I might get some of the technical discussion out of the way before we get into the heat of the debate.

I would like to make it clear at the outset that I will oppose the motion to recommit, and will vote against it for reasons in addition to those which I will discuss in the next 15 or 20 minutes. Those reasons will become apparent in the course of the debate. But I might say at the outset, Mr. President, that the conference report before us represents long, hard work, over a period of some days on both sides of the conference.

It represents long hours of careful deliberation and work between the House and Senate conferees, and the compromises that it represents were not easily agreed to. I think it would be a waste of all those days and hours of effort to recommit this legislation to the conference. But I will get into that question in a little more detail a little later.

I would at this time like to summarize the provisions of the pending conference report which relate to the Clean Air Act. Those provisions fall into three categories.

First are the sections of the bill which would permit extension of deadlines for compliance with stationary source emission limitations for major fuel burning stationary sources which convert to coal to reduce demand for oil. Second are those provisions which relate to emissions from automobiles. And third are amendments which relate to the transportation control strategies required by the Clean Air Act to implement and maintain health levels of air quality.

In regard to the first and second categories, similar matters were considered by the Senate as a part of this or other legislation last year.

Coal conversion was an important element of the bill reported by Senator Jackson's Interior Committee. Extension of compliance schedules for sources required to convert to coal, together with a requirement for obtaining continuous emission reduction systems, was a primary thrust of the amendment which I offered to Senator Jackson's bill on the Senate floor, which the Senate subsequently approved.

The conference agreement on this provision is narrower than either the House or the Senate proposal.

In other words, from the environmentalist's point of view, it is a better deal than either the House or Senate proposal.

While the compromise deadline for compliance with the Clean Air Act requirements is 18 months later than would have been permitted under the Senate bill, the scope of both the House and Senate bill has been narrowed to apply only to those facilities which convert to coal and decide to continue to use coal after November 1, 1974. Only facilities which do not intend at sometime in the future, to reconvert to the use of oil will be allowed an extension of present deadlines. This means that only facilities which either have a commitment to stack gas control techniques or a long-term contract for low sulfur coal will be allowed to utilize this 18-month extension from current deadlines.

This does not mean, however, that concern for public health can or will be abandoned during this interim period, even for those facilities. There are three important features of these amendments which will make possible adequate public health protection.

First, under **section 119(b)(2)(C),** the Administrator has authority to require any fuel-burning stationary source to which the conversion section applies to use coal of the type, grade, or pollution characteristic as the Administrator may decide. This authority is also vested in States and local governments and is conditioned only upon the availability of coal of the stipulated type, grade or pollution characteristic.

Second, the Administrator has the authority to require the Federal Energy Administrator to issue exchange orders to redistribute available low-sulfur coal to areas to "avoid or minimize the adverse impact on public health." **[Sec. 119(b).]** As amendments to the Clean Air Act, this authority continues after expiration of the energy emergency legislation. It is sufficient authority, in my opinion, to assure that low-sulfur coal is used in highly polluted areas during the extended compliance periods, limiting the use of high-sulfur coal to those areas where its use will have the least impact.

Third, the Administrator has the authority to require compliance with the applicable emission limitations "no later than January 1,

1979," [Sec. 119(c)(2)(B)] which gives the Administrator adequate authority to require earlier compliance by those stationary sources which avail themselves of this procedure if he determines the public health and welfare requires more rapid compliance with applicable emission limits. At the same time this later date should permit the orderly development of stack gas control technology and the orderly phasing-in of available stack gas control equipment. In some States where the status of the implementation plan is still unclear, some questions may arise. It is the intent of this legislation that the term "implementation plan in effect on the date of enactment" means the applicable implementation plan as defined in the original Clean Air Act, section 110(d). Mr. President, I realize that these deadlines are longer than the other body. And more important, this provision may reduce the potential whipsawing between environmental requirements and the vagaries of imported fuel supply.

The second aspect of the legislation which relates to automobile emission standards is also familiar to the Senate. On December 17, the Senate passed, by a vote of 86–0, a 1-year extension of 1975 interim automobile emission standards for hydrocrabon and carbon monoxide. I will not, at this point, discuss that amendment in detail.

Mr. President, the conference agreement goes beyond the limited 1-year extention passed by the Senate. Under the agreement, the Administrator can extend the deadline for compliance with the statutory standards for hydrocarbon and carbon monoxide for 1 additional year beyond 1976. [Sec. 203(a).] The House version made that extension mandatory. The conference report makes it discretionary with the administrator. Also, the conference agreement establishes a standard for oxides of nitrogen for 1977 of 2.0 grams per mile. [Sec. 203(b).] The latter is the recommendation of the administration; the former requires an administrative determination that the statutory standards for hydrocarbons and carbon monoxide are neither technically nor economically achievable. The Administrator has already found that those statutory standards can be met. I doubt, therefore, he will reverse his previous findings, the 1975 standards, for another year.

The additional year provided by the Senate bill to achieve those standards was intended to provide an opportunity to evaluate the implications of the technology chosen by the industry for compliance and also to permit an additional year to improve and refine that technology both as to emission efficiency and fuel economy.

The third aspect of the conference agreement relates to transportation control strategies arising out of air quality implementation plans required by the Clean Air Act. This is the area in which the Senate conferees had the greatest reservations. We did not believe it was necessary or appropriate to deal with these issues in the context of the energy emergency. However, the House conferees insisted.

As I indicated before the recess, I would have been reluctant to accept the provisions regarding transportation control under circumstances other than the pendency of this legislation. The Senate conferees did succeed in narrowing these questions sufficiently so as not to prejudice the validity of parking management regulations as elements of achieving and maintaining air quality protective of public health. [Sec. 202(b).]

The Subcommittee on Air and Water Pollution will review these questions during oversight hearings this year. We will attempt to determine whether or not the parking surcharge should be an element of the Administrator's authority and we will decide whether or not the Administrator should utilize, as a means to protect and enhance air quality, authority which he has to regulate parking and other facilities which encourage vehicle use.

Mr. President, I believe it is essential that my colleagues understand the scope, purpose, and intent of those provisions of this legislation which relate to the Clean Air Act. I think we have narrowed the scope of the conference agreement sufficiently to protect environmental values while encouraging the utilization of domestic coal resources. Under the provisions of this act, these resources can be utilized with minimum adverse impact on the environment. To the extent that the provisions contained herein are not adequate for that purpose, I assure my colleagues that necessary modifications will be made in the Clean Air Act Amendments which will be forthcoming this year.

Mr. President, I would like to say a word or two about the strategy that is about to be proposed to the Senate, the strategy of recommitting the conference report to the conference.

I have already said that my own responsibility in the conference had to do primarily with the amendments of the Clean Air Act. And the conference carried out its responsibility and met separately until it had discharged that responsibility.

We were therefore brought into the discussion of other issues involved in the bill. We had an opportunity to evaluate the attitudes of the House conferees on the issues which were the greatest sticking points.

I may say, Mr. President, that two of the issues which constituted the greatest sticking points are the windfall profits provision and these environmental provisions. And I can say to the Senate that the House conferees in my judgment are not likely to change the stand which they took on these issues and stayed with until the end.

I had the privilege in the next to the last day of the first session, Mr. President, of listening to the debate in the House on the bill which the Senate sent over to the House in an attempt at the last minute to get the energy emergency legislation enacted. It was not the conference report. It was the conference report stripped of the windfall profits section.

And I say, Mr. President, that anyone who had the privilege of listening to that debate throughout that long evening could not help coming away from that debate with a clear understanding that the House conferees reflected the overwhelming sentiment in the House.

The House is going to insist upon a windfall profits provision, and I doubt that the House will accept any changes to strengthen the environmental safeguards in the provisions which we agreed to with respect to the Clean Air Act.

May I say, just to wrap up that point, Mr. President, there is an enormous tide against environmental values and the environmental legislation that we have put on the books, which is very visible on the House side. What we have in this bill, on the environmental issues, is a good deal, and the tide against this moderate kind of approach is

rising very rapidly, as Senators who returned to their States during the recess. I am sure, understand. Under the pressure of the energy emergency, there is a tendency on the part of rank and file citizens and Congressmen to throw overboard all of the safeguards which we have written to protect the environment.

This conference report does not undermine any of the fundamental values which we have protected in such legislation, and to open up the legislation to further modification is to risk losing far more than we have any chance, conceivably, of gaining.

Mr. JACKSON. Mr. President, I want to pay high tribute to the able and distinguished Senator from Maine for his outstanding leadership in the conference in handling this very, very difficult matter. The House practically repealed the Clean Air Act; that is what the Senator was confronted with in carrying out his responsibilities.

I think we passed a very sensible provision in the action by the Senate, and in the conference we worked out a proposal that to me was statesmanlike. The Senator from Maine deserves great credit, not only on this particular part of the conference report but on the report as a whole. With the Senator from West Virginia (Mr. Randolph), he played a very vital role in bringing it about.

Mr. President, considerable discussion has been given in the past few months to the term "windfall profits." **[Sec. 110.]** It appears that there is much misconception about profits in general.

Just what constitutes a windfall profit? To answer that question we first must review a few general principles that apply to profits and profitability.

The attractiveness of an investment is based on its profitability, that is, the rate of return on the investment of capital required. In other words, how much in earnings does the money tied up in an investment generate for the investor? A basis for comparison would be the interest that is earned on money placed in a savings account.

Net profits by themselves do not necessarily give an indication of the profitability of an investment. Net profits must be compared to the capital investment required to generate those net profits. For instance, $1 million net profit is a very poor annual return on invested capital if $20 million ws required to generate the $1 million profit. On the other hand, $1 million net profit would be a tremendous return on an investment of only $5 million. The same $1 million in net profits represents only a 5 percent return in the first instance and a 20 percent return in the second. Even if the net profits in the first example increased 100 percent to $2 million the return on the investment of $100 million would be only 10 percent—still much below the 20 percent figure in the second case.

Increases or decreases in net profits and return on investment should only be used on a comparative basis because of general fluctuations in the economy as a whole. No single industry's profits can be reasonably analyzed unless compared to the performance of other industries at the same time.

Oil industry net profits are up in the first 9 months of 1973 compared to the very poor first 9 months of 1972. Oils—domestic and international—showed net profits up 47 percent. However, compared to increases in net profits for other corporations such as the New York Times, up 93 percent; the Washington Post, up 57 percent; the

American Broadcasting Co., up 45 percent; International Harvester, up 47 percent; U.S. Steel, 116 percent; and Kaiser Industries, up 601 percent; and oils—domestic and international—hardly seem out of line.

The same is true when oils—domestic and international—are compared to representatives of other industries on a rate of return on equity basis for the first 9 months of 1973 compared to the first 9 months of 1972.

The Columbia Broadcasting System showed a rate of return above 20 percent. Dr. Pepper had a corresponding figure of 29.4 percent; Ford Motor Co., 17.6 percent; Dow Chemical, 18.8 percent; appliances reported a 16.5 percent return; automotive, 17.5 percent; building materials, 14.5 percent; chemicals, 14 percent; drugs, 19.9 percent; electronics, 15.2 percent; food, 13 percent; instruments, 15 percent; office equipment and computers, 16.6 percent; publishing, 13.9 percent; compared to 13.2 percent for oils—domestic and international.

Unfortunately, there seems to be a fever spreading today that profits are bad. Profits are bad only if they do not act in some way to solicit additional supplies for the consumer's ultimate use.

If the energy industries within the United States are to provide adequate supplies of energy for you and me they must have profits so they can reinvest them into projects that will increase energy supplies.

John Winger of the Chase Manhattan Bank estimates that the Petroleum industry must find twice as much new oil in the 1970 to 1985 period as it did in the preceding 15 years. He says $450 billion in capital must be spent in the search for oil between 1970 and 1985. That is compared to only $104 billion which was spent the preceding 15 years.

An additional $360 billion must be invested in refineries, tankers, pipelines, storage equipment, and marketing facilities; therefore, a total of $800 billion must be spent between 1970 and 1985 or 4 times the amount spent in the previous 15 years. Debt service, working capital, and dividends will require another $550 billion in the 1970–85 period for a grand total of $1.350 trillion which must be spent worldwide.

The recent report entitled "U.S. Energy Outlook" by the National Petroleum Council estimated total capital requirements for the U.S. energy industry between 1971 and 1985 to range from $451 billion to $547 billion. These estimates do not include other major sums required for petroleum marketing, gas and electricity distribution, and the development of overseas natural resources to satisfy U.S. imports requirements. They were strictly related to requirements for domestic energy resource development, processing, and primary distribution.

These sums are staggering. Referring to the petroleum industry alone, capital outlay in the United States increased steadily during most of the decade in the 1960's, rising above the $8 billion level in 1968. Since then spending has failed to increase—remaining at about the 1968 level despite the rapid growth in the petroleum market.

Both increased profits and increased financing would be required if these investments are to be made. Financing will not be readily available to any industries which might have trouble retiring the debt due to limitations on profits.

How do we know that any increased revenues falling into the petroleum industries hands due to price increases would be reinvested to increase supplies of energy for the people of the United States?

Mr. President, on October 5, I asked both integrated and independent companies engaged in the production of domestic oil and gas to answer the following question:

Assuming that sufficient new acreage will be available in the United States for the exploration for new reserves of oil and natural gas and that price controls on either or both commodities are lifted, what percent of the additional cash flow resulting from the removal of existing price controls on natural gas or crude oil or both, would you invest in the exploration for and development of new domestic petroleum and natural gas reserves including domestic oil, and gas pipelines, domestic refineries, and domestic natural gas processing plants?

Mr. President, as I said in my remarks of October 5, 1973, I have spoken freely many times concerning our Nation's energy situation. I have given many speeches on energy on the Senate floor, and have spoken about energy on numerous other occasions before interested groups. In most of those speeches, in the interest of achieving adequate domestic supplies of energy, I have urged that all price controls on natural gas and crude oil be removed. I have said specifically that there needs to be increased economic incentive, that there must be considerably more capital available, and that the consumers must assume part of the responsibility by paying higher prices if adequate supplies of energy are to be developed.

Most people agree that a free market will increase our supplies more rapidly than a controlled market—even a controlled market which provides for price increases for natural gas and crude oil. But many wonder if the petroleum industry would invest the increased cash flow resulting from decontrol of prices into areas that will help to solve our domestic energy shortage.

I asked over 400 integrated and independent companies engaged in the production of domestic oil and gas to answer the question I read earlier.

My office has received replies from 115 integrated and independent companies. Not one of those replies gave any indication that a large portion of the additional cash flow resulting from the removal of existing price controls would not be used to increase domestic energy capabilities.

On the contrary, 93 of the companies responded by saying that "virtually all or 100 percent of their increased cash flow would be so utilized." The remaining few companies, although they did not say that they would reinvest virtually all the additional cash flow, did imply that they would reinvest significant amounts such as "90 percent, a minimum of 90 percent, or a minimum of 75 percent."

It makes sense that these companies, as they have indicated to me, would continue to invest in that industry which they know best, especially when the opportunity for a reasonable rate of return is improved by price decontrol.

A shortage of energy was inevitable, and it has been no surprise. Michael T. Halbouty, past president of the American Association of Petroleum Geologists, was one or many who could see the writing on the wall. He said in 1960:

I can safely predict that between now and 1975 we will have an energy crisis in this country. Then people will say "the industry is to blame, why weren't we told?" Well, I'm telling them now.

That was in 1960 and I could recite numerous similar warnings over the years.

In 1965 a high of 16,173 exploratory wells were drilled—in 1972 only 7,587 exploratory wells were drilled—less than half the 1956 amount. Also exploratory geophysical crew activity dropped to half as much in 1970 as it was in 1960. The reason we are not drilling more wells is easy to see. Profits have been insufficient.

The price for crude oil in 1957 was $3.09. The price of crude oil decreased slightly after 1957 and then again reached $3.09 per barrel in 1969. In constant 1958 dollars the price of crude oil in 1957 was $3.17. By 1972 in constant dollars the price of crude oil per barrel had decreased to $2.32. The price of crude oil was not keeping up with the increasing costs to produce it.

In 1969 the depletion allowance was changed from 27½ percent to 22 percent. The additional tax burden upon the petroleum industry removed $500 million from profits that might have been used to increase supplies of energy.

The now abandoned import quota system has over the years acted to hold down domestic crude oil prices because of the constant threat to allow cheaper foreign oil to be imported if prices domestically were to rise.

Also, the import quota program, with provisions promulgated under pressure from the New England States to allow fuel oil to be imported quota free, led to refineries being built outside the United States.

Over the years these actions have caused decreases in domestic drilling activity. Only 21 percent of all domestic wells are drilled by the 30 largest companies—including the multinationals—with their large profits from their foreign operations, 79 percent of all domestic wells are drilled by the independents who are not the beneficiaries of large profits. Yet they will drill the great majority—over 75 percent of all the domestic wells—drilled in 1974. If we adopt this conference committee report with the windfalls tax rebate, we will seriously hamper the ability of the independents to do their job of increasing sharply the number of domestic wells drilled in 1974.

Small producers have been forced out of the crude oil producing business. Not by lack of competition but rather by lack of profits. Fifteen years ago there were about 20,000 small producers, now there are only 10,000. They went into other businesses that were more profitable.

Many people talk of the rich oil men. For every person who has made any money in the oil industry, I can show you many who have gone broke. If it were such a bonanza why have so many gone broke? The answer is simple. The oil industry has been no bonanza.

The recent increases in the price of crude oil and natural gas have spurred activity in the oil and gas fields of the United States. This incentive should have occurred long ago.

Drilling rigs have been running in numbers 13 percent to 15 percent greater than last year. Marginal producing wells that would have been plugged and abandoned by now at old oil prices have been held in production because new higher prices justify their operation.

Many people have tried to sensationalize the increases in net profits of companies in the petroleum industry. Claims of price gouging by the big companies are unfounded. The Cost of Living Council has had controls on domestic prices of the petroleum industry as it has had on all industries.

The real increase in profits has come to major international petroleum companies because of their profit increases in the Eastern Hemisphere. These profits are not necessarily paid by Americans—the whole world is served by American companies. We are fortunate indeed to have major petroleum companies that are aggressive in the world petroleum market. Look at the precarious position of Japan and Western Europe, and other industralized nations, compared to us.

The problem is that the petroleum industry as a whole and in this country is not big enough today. Lack of sufficient profits have stunted its growth and now we face inadequate supplies of oil and gas.

This Congress should, after thorough hearings and deliberation, pass legislation that would assure to the consumers in the United States that no price gouging will occur. But at the same time, Congress must be very careful not to enact a law that will be counterproductive to increasing the supply of energy.

The Senate Finance Committee and the House Ways and Means Committee are having or are going to have hearings to determine how to accomplish the desirable goal of increasing energy supplies while preventing excessively high prices in a time of shortages.

We must pass an excess profits provision which will penalize those with large profits who do not reinvest those profits in exploring for new domestic reserves of oil and gas and provide an incentive for those with large profits to reinvest those profits in new domestic reserves of oil and gas.

Bill Simon, Administrator of the Federal Energy Office also is studying the petroleum industry's profits.

For Congress to act now with an unworkable rebate is playing political poker and the stakes are the welfare of the Nation.

So, Mr. President, let me emphasize some of the highlights of the situation we are facing right now.

First, I think it is important to note that the role of the independents in drilling oil and gas wells is a very big role. They drill some 79 percent of all the wells drilled in this country.

The number of wells drilled, compared to 1956, has dropped to half, and yet the demand currently, today, is double that of 1956.

The question is, why did the drilling drop off during that period of some 18 years? The reason is that the price of oil in 1957 was $3.09, and then dropped, and stayed below that figure until it got back to $3.09 in 1969, at the end of the 13th year.

At this point, the profits in the domestic industry were severely eroded. The number of independents had declined from about 20,000 to 10,000. Congress passed a bill to reduce the depletion allowance from 27.5 percent to 22 percent, which had the effect of increasing the taxes on the oil industry by some $500 million, and reducing very substantially the money available for investment in the oil industry.

During this period, we had mandatory import controls because of the pressures for cheap foreign oil. The tendency of the Government was to lower the restrictions on imports and increase the amount of oil

that was coming in, in order to keep the domestic price down, so as to prevent increases in the price of crude oil that the domestic oil industry needed to offset increases in the cost of steel and labor.

This particular conference report includes a proposal to limit windfall profits is not workable. [Sec. 110.] It has been stated by many experts in economics and by the IRS that it would be very difficult to administer this particular proposal. Also it does not give the independent producer any assurance of receiving the capital they will have to invest in 1974. It is really the independents who are going to be called upon to do a lot of drilling. It is not the independents who have been the beneficiaries of large profits.

There is no question that the multi-national companies have experienced large profits. These large profits come from foreign nations. The independent companies have not been the beneficiaries of the large profits. Yet they are going to be required to do most of the drilling that will be done in 1974. The increase in drilling in 1973 over the previous year has amounted to only some 15 percent. So in our haste to write this proposed legislation, we do not want to be remiss to the point of handicapping the independent companies in this most worthy enterprise of increasing the amount of oil wells that can be drilled.

So far as the multi-nationals are concerned, certainly we want them to reinvest as much as they possibly can in domestic wells. It is important, so far as the total supply and demand of production is concerned, that the American companies now participate in increased drilling activity around the world, in order to bring some balance to the supply and demand. If this does not take place, then the extremely high prices of foreign oil, which are prevalent today, are going to continue. This will not only work to our detriment, because we still remain large importers of oil, but it may well lead to a worldwide depression.

I favor the recommitment of this proposal, so that there will be an opportunity to consider carefully an excess profits provision—which would provide an incentive to companies having large profits to invest in domestic exploration and production.

I think it is vital that we take our time to write a good law, so that the United States can be independent, and not have our foreign policy dictated by other countries which oppose our own sound judgment.

The Presiding Officer (Mr. Helms). Under the previous order, the hour of 2 p.m. having arrived, the Senator fom Wisconsin (Mr. Nelson) is recognized to offer a motion to recommit the conference report (S. 2589).

Mr. Nelson. Mr. President, I move to recommit the conference report (S. 2589).

The Presiding Officer. Time for debate shall be limited to 2 hours to be equally divided between——

Time for debate shall be limited to 2 hours, to be equally divided and controlled by the Senator from Wisconsin (Mr. Nelson) and the Senator from Washington (Mr. Jackson), with the vote to occur at 4 p.m. today.

Who yields time?

Mr. Nelson. Mr. President, I yield myself such time as I may need.

Mr. President, my sole interest in moving to recommit the conference report is to see whether, once again, in conference, it would be possible

to modify the environmental provisions [Title II] which are in the conference report and substitutes for them the very carefully designed provisions of the Senate bill which were drafted by the distinguished Senator from Maine (Mr. Muskie) and, which in my judgment are better provisions, than what came out of the conference.

Of course, that conference occurred last year. The distinguished Senator from Maine and the distinguished Senator from Washington came out of it, I am sure, with the best provisions they could get at that particular time. However, a number of things have changed since then. I think there may be an opportunity to modify the environmental provisions and remove the section dealing with an excess profits tax, which is not, in fact a tax at all.

There should be some reasonable opportunity to remove that section now, because as contrasted with last December, the Ways and Means Committee will begin hearings on taxes on the oil industry, next week, on February 4. The Finance Committee, under the chairmanship of the distinguished Senator from Louisiana (Mr. Long) will shortly conduct hearings on proposals involving taxes on the oil industry.

So we are going to have before us legislation which will give us the opportunity to vote on an excess profits tax. There will be legislation before us which will give us the opportunity to vote on a price rollback. There will be legislation before us which will give us the opportunity to vote on abolishing the depletion allowance. Therefore, I am hopeful that it might be possible to modify the environmental section and to remove the so-called excess profits tax section.

If that is not possible, I want to make it clear on the floor of the Senate, that if they cannot reach agreement to modify the conference report, and they come back to the Senate with the same proposal, then I shall vote for it. But I think there is an opportunity to improve both sections. My judgment may be wrong, but I hope it is not.

I am moving to recommit this conference report for several reasons:

First. It is unnecessary and dangerously compromises the law respecting air emissions from stationary sources.

Second. The so-called excess profits tax is a total and complete misnomer. It is not an excess profits tax. In fact, it is not even a tax of any kind whatsoever. The press and the Members of Congress who refer to it as an excess profits tax are confusing both the public and themselves. This proposal establishes a procedure by which an individual citizen who feels he has been overcharged for an oil product may file a claim with the renegotation board to seek reimbursement for the alleged overcharge. It is quite clearly unworkable, unenforceable and almost certainly unconstitutional.

Furthermore the Senate is going to have ample opportunity to debate and vote on several oil tax measures in the very near future. The Ways and Means Committee starts hearings next week on February 4. And very shortly the Finance Committee will commence hearings. The Senate will have the opportunity to vote on an excess profits tax, a price rollback and the depletion allowance.

Third. All of the various significant provisions of the bill have either already been separately adopted by the Senate or are momentarily scheduled for hearings and action by the Senate or are contained in other provisions of law already enacted or can be expeditiously passed by both Houses because they are noncontroversial.

Mr. President, there are six major provisions in the conference report on the Energy Emergency Act, S. 2589 that deserve attention.

First. the conference report contains a provision that goes much too far in compromising the Nation's primary and secondary ambient air quality standards over a long period of time. **[Title II.]** The House-Senate conferees should reconsider and look toward the langauge drafted by the Senator from Maine (Mr. Muskie) for guidance on this matter.

If the conference report is recommitted EPA will not be constrained, limited, or hampered from granting variances from air pollution regulations. In fact, EPA has already granted variances and will continue in their efforts to balance the needs for increased energy production against its legislative mandate to uphold and protect the quality of the Nation's air. The Clean Air Act contains an "expedited procedures" section designed to meet the needs of such emergencies.

The Senate langauge was carefully and thoughtfully drafted by Senator Muskie, the chairman of the Air and Water Subcommittee of the Senate Public Works Committee, and subsequently cosponsored by all 14 members of the full committee. This measure which the Senate approved on November 15, 1973, by a vote of 83 to 2 permits temporary variances to be granted while the EPA carefully gathers information and prepares a comprehensive report to the Congress on the need for further action. This language will grant variances without substantially compromising the Nation's efforts to improve the quality of its air.

The langauge proposed by Senator Muskie provides for an initial short-term variance from air pollution regulations. It calls upon the EPA to study the situation and report back to the Congress with recommendations 7 months before the initial variances expire. There is a built in recognition that if the energy crisis grows worse and the need persists the variances can be extended. And the Muskie amendment underlines the concept that this is a temporary measure. a short-term suspension and relaxation of regulations only until 1977.

The conference substitute language basically allows a 5-year delay in meeting air pollution regulations. **[Sec. 201.]** It permits that plants that were either in the process of converting from natural gas or oil to coal or that are ordered to convert under other sections of the bill will be able to apply for a variance which will suspend primary and secondary standards for these installations until January 1, 1979.

Second. the conference report correctly speaks to the need to organize the Nation's energy programs in one independent agency, in this case, the Federal Energy Office. The conferees acknowledge that this organization will be replaced by the Federal Energy Emergency Administration. This section of the conference report is unnecessary. On December 19, 1973, by a vote of 86 to 2 the Senate passed and sent to the House a comprehensive and farsighted bill, authored by Senator Jackson to provide for the efficient management of the Nation's energy policies and programs. This bill formally establishes the Federal Energy Emergency Administration.

Third. the conference report that we have before us contains language which would authorize the President to ration petroleum products that are in short supply. **[Sec. 104.]** Whereas, the Senate may at

some future time wish to enact a straight-forward single piece of legislation we are not in an emergency situation now.

Mr. Simon informs us that rationing may not become necessary until this fall. Certainly that leaves us plenty of time to consider this issue and report out a thoughtful piece of legislation.

The President is not now without adequate tools to handle a rationing situation. The Defense Production Act passed during the Korean crisis allows the President to take whatever steps are necessary to allocate, products in the civilian marketplace in the case of a national or defense emergency.

Recognizing in advance that this Nation will be in an energy crunch for the foreseeable future and that the President may need additional authority to deal with specialized energy problems the Congress enacted an amendment to the Economic Stabilization Act which was offered by the distinguished junior Senator from Missouri (Mr. Eagleton). This amendment authorizes the President to issue such executive orders and directives as he deems necessary to assure equitable distribution of scarce petroleum products to assure that all areas of the country have sufficient fuel to meet the vital needs and to prevent anticompetitive effects within the petroleum industry.

So far this authority has only been exercised for allocations of refined products at the wholesale level which is tantamount to rationing.

Fourth, the conference report contains a section establishing a national conservation policy. **[Sec. 105.]** We must all reduce the amount of fuel and energy we use. While this provision of the conference report speaks to a great need, again, the able Senator from Washington has provided us with a better and more comprehensive piece of legislation in the form of S. 2176, the National Fuels and Energy Conservation Act which passed the Senate by a vote of 75 to 15.

The realities of the energy crisis have already forced many States to devise energy conservation programs. Hawaii has gone to mandatory rationing, Oregon has a volunteer program now and many States, like Wisconsin have already established statewide energy efforts to reduce energy consumption.

Finally the conference report contains a section dealing with employment impact and worker assistance. **[Sec. 116.]**

The language of the conference report severely limits those workers that would be eligible to receive the proposed benefits. The provisions of the act would apply to persons unemployed directly "as a result of the provisions of this law," and it does not apply to workers laid off before the legislation is signed by the President.

This section will not help many people in the automobile, steel, rubber, and other industrial businesses that have recently been laid off. We need a much broader bill.

What we really need is a general change in the unemployment compensation and insurance provisions of the Federal statutes.

If this report is not reported back I will introduce legislation that will provide an adequate program of unemployment assistance to State governments that is adequate to cover essential needs.

Mr. President, **section 110** addresses itself to one of the most important problems of the present energy shortage. The energy shortage which has meant to most Americans increasing prices and lowering

thermostats, has meant to the oil companies a bonanza of profits. While private initiatives and industry should be rewarded, these profits do not reflect increased productivity or production, but rather reflects the oil companies' positions as beneficiaries of monopolistic pricing decisions of a few Arabian shieks.

The distinguished chairman of the House Interstate and Foreign Commerce Committee, Congressman Staggers, is to be commended for being one of the first to see that the energy shortage does mean unconscionable profits for oil companies. The Nation is in his debt for bringing this issue so promptly to the attention of Congress and for moving so vigorously in proposing legislation insuring that oil companies do pay their fair share of taxes.

Recent headlines dramatically demonstrate the validity of Congressman Staggers' concern. For the year just ended, the 21 top oil companies accumulated profits estimated at almost $10 billion, which was not only an industry record but was twice what the Nation's automibile makers generated—1973 was Detroit's best sales year ever—and 10 times what the country steelmakers could manage. For the entire oil industry profits rose by almost 60 percent.

While 1973 profits were spectacular, 1974 profits will be unbelievable. According to estimates by Walter Heller, former Chairman of the Council of Economic Advisers under President Kennedy, and George L. Perry, the recent 50-percent increase in oil prices will result in approximately $24 billion in additional profits.

These figures demonstrate the need for substantial additional taxation of the oil industry. I join Congressman Staggers in his valiant efforts to tax windfall profits of oil companies, but I cannot, in good conscience, support **section 110** of S. 2589 as reported by the Senate and House conferees. Last week the Senate Finance Committee conducted 2 days of panel discussions on this section. The panelists consisted of 11 experts in this area, most of whom have held high positions in the Internal Revenue Service or the Treasury Department during four administrations. This was an expert panel and they were unanimous in their condemnation of this proposal.

After careful consideration and study of their testimony and **section 110**, I am compelled to the conclusion that it is unconstitutional, unworkable, and counter-productive. It should be clearly understood that **section 110** is not a tax and has none of the characteristics of a tax. Rather, it establishes a system of restitution. **Section 110** is based, in large part, on the Renegotiation Act of 1951, rather than the language of any of the three excess profits taxes enacted during three major wars in this country's history. While excess profits taxes have proven to be extremely hard to administer and have resulted in extended litigation, they are models of precision and objectivity, compared to the vague standards of the Renegotiation Act. The language of the Renegotiation Act has been described by one of the country's renegotiation experts as involving "wholly a matter of judgment." because of the absence of measurable objective standards.

The Renegotiation Act deals with the recapturing, under certain circumstances, of excessive profits on defense contractors engaged in business with the U.S. Government. **Section 110** attempts to transfer this concept to transactions wholly between private parties and where

no party to that transaction, unlike the circumstances of the Renegotiation Act, has contractually agreed to a system of recapture of excessive profits. **Section 110** is of doubtful constitutionality because its application is uncertain. The recapture of windfall profits is completely haphazard, dependent totally upon a petition of an interested party, involving any sale of any petroleum.

Furthermore, the proposed system would involve an unconstitutional delegation of congressional power or of taking of property without due process of law, because of the vagueness of the statutory standards and concepts.

At a time when everything should be done to stimulate production, **section 110** would result in a cutback of production. **Section 110** establishes a base year for purposes of imposing a refund and since oil producers are receiving more today for their present level of production, they would have to cut back their production just to remain within the permissible level.

It is argued that **section 110** should be enacted because it does not go into effect until January 1, 1975, before which Congress will enact a better law which would, among others, repeal this section. **Section 110** while taking effect on January 1, 1975, applies to all sales in petroleum products during this year. While this law exists, petroleum sellers must assume it has some meaning. The witnesses for the Senate Finance Committee were unanimous in their testimony that they would have to advise their clients not to undertake any new production if this law was in effect. The following testimony by Mr. Walters is typical:

> I would advise any client I had definitely against making any investment which would subject him to this windfall profits except in the case of the greatest urgency where it was a necessity to retain a lease or some rights. I do not see how any attorney could advise any client to do anything that would subject him to this tax. I think it would be a very definite deterrent to development of greater energy resources.

It is my belief there is a need for substantial additional taxation of oil companies. The first step is to end immediately existing tax preferences granted the oil industry. Trying to tax away excess profits while continuing to present tax breaks is like trying to scoop water out of sieve. On January 24, I introduced a bill which would totally repeal the percentage depletion allowance. This tax preference, costing the American taxpayer over $1.5 billion a year, has failed to provide America secure sources of energy or to encourage domestic production. A 1969 Treasury Department study showed that although $1.4 billion in Federal revenue was being lost annually through the depletion allowance, it had little influence on exploration and resulted in additional oil reserves valued at only $150 million. If the depletion allowance is not changed, this tax gift to the oil companies could soar to $3 billion this year.

In addition, Congress should reevaluate the special provisions which permit the current writeoff of intangible drilling and developing costs for producing oil and gas wells. Cost of labor, materials, and other goods incidental to drilling are considered "intangible costs of drilling" and can be expensed. This is a benefit because it permits the immediate tax-free recovery of capital investments. By most criteria, exploration and development costs for productive wells would be con-

sidered an investment in capital and, therefore, subject to a depreciation allowance over the useful life of the capital asset.

Third, there is a need for a critical examination of the oil companies' use of the foreign tax credit. The foreign tax credit is conceptually a good device to prevent double taxation, but in the oil industry this tax provision has a peculiar effect. Royalties are artificially termed taxes and then are used as a shelter to protect other earnings and operations of international oil companies from paying even a modicum of Federal income taxes.

A small portion of these huge payments to the producing nations could be considered as a tax on profits and the oil industry should be treated the same as other industries that can offset taxes paid to foreign governments against U.S. taxes. But, the bulk of the sums are obviously royalty payments, no different than the cash bonuses and royalty paid to the U.S. Government for offshore leases. They should be treated as a cost of doing business, not as a tax.

One of the few benefits of rising oil prices is that it provides Congress with a unique opportunity to restructure our tax code, and to achieve a more rational taxation of the oil industry. The first step of this more rational tax policy is to remove the special tax provisions and let the oil companies pay their fare share of taxes.

Mr. Long. Mr. President, as the Senator has stated, we will be conducting hearings on the excess profits tax proposal which has been made by the administration and which the House has indicated it proposes to send us. We can expect to be conducting hearings in the next 2 weeks.

The Senate has already voted on one tax reform type of suggestion that would affect the oil companies, but as the Senator knows, we will be recommending a great number of revenue bills all during this year; and in connection with any of those bills, anyone who wants to can offer either the administration's excess profits tax proposals, or any other.

I am sure that the Senator is aware of the fact we have had lawyer after lawyer state that the proposed renegotiation thing in this bill is unconstitutional. I have yet to hear a single lawyer state that in his judgment the proposal is constitutional.

As a matter of fact, in view of the fact that everyone selling any oil, any gas, or any petroleum product under this bill, including 220,000 service stations, could be the subject of litigation by every person who makes a single purchase from them, this could result in hundreds of millions of lawsuits before the so-called Renegotiation Board.

The unconstitutional potential of this measure is such that it has been testified to that it threatens the entire bill, having everything in it stricken, not just the tax thing, but the whole thing, because it has become such a major part of the whole proposal, to say that anyone who sells any petroleum product at all could be subject to an unconstitutional renegotiation process.

Mr. Nelson. The Senator is correct. As the Chairman knows, there were 11 witnesses before the committee and they included former Commissioners of the Internal Revenue Service who served under four different administrations and all of them said that in their opin-

ion the proposal was unworkable. Several said that it was unconstitutional and that the President would not sign it. I think it is most doubtful that he would. I do not see how he could sign it. Several of them stated that if he did sign it, its unconstitutionality would have to be tested.

The Senator is correct. I carefully followed the hearings and read the testimony, and it is clear that any individual any place in the United States who is aggrieved by a price charged to him by a filling station, any one of thousands all over this country, may then file a complaint with the Renegotiation Board. Then there will be before the Renegotiation Board an application for a refund for part of the price of 10 gallons or a hundred gallons of gasoline that were purchased by this individual. The Renegotiation Board has to decide whether it was an excess charge by an individual filling station at the retail level. Of course, the same is true of an individual complaint against a wholesaler or a producer of oil.

It should be understood that this is not a tax. It is a method for allowing individuals to raise tens of thousands of complaints before the Renegotiation Board about the prices that are being charged to them.

Mr. Long. The Senator is not talking about tens of thousands of complaints. The old renegotiation law, which involved the Government proceeding against a Government contractor, has expired; and 20 years after the conflict for which it was passed has come and gone, they still have 50,000 unfinished cases over there, where only the Internal Revenue Service could file the complaint.

Think of where we are going to be when any one of 200 million citizens can file a complaint against 220,000 gasoline stations and anybody else who is in the oil and gas business in any respect whatever.

For example, anybody who is selling pipe or equipment, even selling mud to put in the ground in the process of drilling a well, is a subject of the Renegotiation Board if they made any more than they made in the base period or anything more than the renegotiation board might feel is a fair profit, whichever is the lesser.

The testimony before the committee is that that would amount to taking a man's property without due process of law, because it fails to specify what the man is entitled to keep and what he must give back under the law.

The only way a renegotiation law can be upheld is where there is a contract between the Government and a contractor in which the contractor agrees that he will give back anything more than the Renegotiation Board would think would be a fair profit. There is no contract here. There is something that proposes to proceed on the taxing principle, without any contract and without it stipulating what the man is entitled to keep and what he is not entitled to keep. It mentions five or six different things they are supposed to take into consideration in determining what they think is a fair profit.

In the case of a company that had more than $500 worth of business, if a hundred people looked at those standards in an attempt to determine how much the company is entitled to keep—or a producer or filling station is entitled to keep—and how much they must give back, every one would arrive at a different figure, because there is no firm guidelines as to what they could and could not keep.

Even when talking about what one would hope would be the simplest part of the proposal, just to say that he cannot keep more than the average of what he made during the period 1967 through 1971, it fails to say whether it is talking about how much he made in taxable profits or how much he made in terms of the accountant's profits—even the accounting principles vary, and there is some dispute about that—or how much he made from a banker's point of view, or how much he made from lender's point of view, or how much he made from an investor's point of view, or how much he made from the point of view of the tax code. It fails to specify.

The Senator knows, as does everyone else, that there are things in the tax laws that are subject to debate, as to whether or not they are proper deductions. Take the oil depletion allowance, which has been attacked by the Senator from Wisconsin and many others. Is that going to be regarded as an expense? Is it going to be regarded from the bankers' point of view? Will they be permitted to take only cost depletion?

In other words, looking at the language of the bill, I would challenge any two Senators who have something to do with bringing this foolishness here to take the same set of facts and arrive at the same conclusion as to how much a person should be permitted to keep out of what he earns and how much he has to give back.

Mr. NELSON. I say to the Senator that I have the guidelines here. No Philadelphia lawyer would be able to interpret them. This is what it says:

(6) For the purposes of subparagraph (B) of paragraph (3), the term "windfall profits" means that profit (during an appropriate accounting period as determined by the Board) derived from the sale of any petroleum product determined by the Board to be in excess of the lesser of—

(A) a reasonable profit with respect to the particular seller as determined by the Board upon consideration of—

(i) the reasonableness of its costs and profits with particular regard to volume of production;

(ii) the net worth, with particular regard to the amount and source of capital employed;

(iii) the extent of risk assumed;

(iv) the efficiency and productivity, particularly with regard to cost reduction techniques and economies of operation; and

(v) other factors the consideration of which the public interest and fair and equitable dealing may require which may be established and published by the Board; or

Mr. LONG. I ask the Senator to stop there.

Does the Senator think that any two Members of the United States Senate—if this is not being applied to anything but a small corner filling station in a small neighborhood—could take those standards and arrive at the same figure?

Mr. NELSON. No two people could arrive at that. What makes it worse is that those who are subject to the law, including the 220,000 retail outlets, will not be able, for themselves, to determine what they may charge, using these guidelines.

As the Senator knows, we are not in agreement on the depletion allowance, because I would eliminate it. I have introduced a bill providing for its elimination. I am sure that I would go further than the Senator from Louisiana on the question of excess profits. I would probably go further than the Senator from Louisiana in rollback of prices.

I am for doing one, two, or all three of those, and I will be supporting them on the floor of the Senate. But I do not think we ought to be going through the exercise of adopting a piece of legislation which is called an excess profits tax and is no such thing at all, although most Members of the Senate think it is and most Members of the House think it is, and the press thinks it is, because that is what they are calling it in the newspapers. It is not an excess profits tax. It is just a technique for letting millions of people take a complaint to the Renegotiation Board about a purchase they think was excessive, and then these people will be run through these guidelines, which I, as a lawyer, certainly could not interpret and I doubt whether any other lawyer could. I think it falls on these guidelines alone.

We had 11 people appear before the committee. A former general counsel to the Military Renegotiation Policy and Review Board said it was unworkable. Another, from the Renegotiation Board, said it was unworkable. Nine tax lawyers, four of them former Commissioners of Internal Revenue—Republicans, Democrats, conservatives, and liberals—all said it would not work; and several said it was unconstitutional.

So I do not think we ought to kid the public by passing a piece of legislation that will not work and is unconstitutional and would require the President's veto. If he did not veto it, he would create great confusion all over this country.

Furthermore, it could wind up in the Supreme Court when, in fact, we have an orderly procedure in these institutions, in the Ways and Means Committee and in the Committee on Finance and in action on the floor, to bring up the issue we are interested in, to debate it, and take action.

Unfortunately, people around the country think this was an excise profit tax. I have received letters which state, "I hope you will support the excise profits tax." I would, but there is none in this bill. Some 999 people out of 1,000 do not know it unless they were on the conference committee or in the hearings held before the Ways and Means Committee or the Committee on Finance on this subject.

Mr. President, I ask unanimous consent to have printed in the Record the names of the various former Commissioners of the IRS and experts who appeared against this proposal saying that it was either unworkable or unconstitutional or both.

There being no objection, the list was ordered to be printed in the Record, as follows:

Seldon S. Cohen: Former Chief Counsel to the IRS 1964–1965, Former Commissioner of the IRS 1965–1969, 1730 M Street, N.W., Washington, D.C. 20006.

K. Martin Worthy: Former Chief Counsel to the IRS 1969–1972, 1776 F Street, N.W., Washington, D.C. 20006.

Charles Davis: Former Chief Counsel to the IRS 1952–1953, 1750 K Street, N.W., Washington, D.C. 20006.

William S. Whitehead, Chairman, The Renegotiation Board, July 1973, Washington, D.C.

Mortimer Caplan: Former Commissioner of the IRS, 1961–1964, 1101–17th Street, N.W., Washington, D.C. 20036.

John S. Nolan: Former Assistant Secretary of the Treasury, 1969–1971, 1700 Pennsylvania Ave., N.W., Washington, D.C. 20006.

Johnnie Walters: Former Commissioner of the IRS, 1971–1973, 1730 Pennsylvania Ave., N.W., Washington, D.C. 20006.

Edwin Cohen: Undersecretary of the Treasury (former) 1972–1973, Washington, D.C. 20220.

Jerome Kurtz: Former Tax Legislative Counsel, Treasury Department 1966–1968, 12th floor Packard Building, Philadelphia, Pa. 19102.

Barron K. Grier: Former General Counsel to the Military Renegotiation Policy and Review Board, 1948–1951, 1700 Pennsylvania Ave., N.W., Washington, D.C. 20006.

Mr. Long. There is a group known as Tax Analysts and Associates. I have never found myself in agreement with those people, but they have great respectability with the Washington Post and persons with whom I disagree on tax matters. That group proposes that the oil companies should be denied their percentage depletion, their intangible drilling costs, and foreign tax costs. They say they should be taxed like any other manufacturing company. One would think that certainly that group and certainly the Washington Post, having advocated to take away from the oil companies, would advocate this, but they are against it. One finds that people against everything that will benefit the companies, anything tailored to their advantage, are in favor of taking it away from them. But people say it would do more harm than good, that it would result in wasteful practices, and result in less oil.

Mr. Nelson. And it would not raise a single penny in tax revenue.

Mr. Long. It would not raise a nickel.

Mr. Nelson. It would not result in a refund to the consumers.

Mr. Long. It would give only the impression that Congress has done something when in the last analysis the whole thing would be declared unconstitutional by the Supreme Court, and the Supreme Court would throw it into the trash basket. So we would have enacted a nullity, and it would have resulted in diminishing the ability of this Nation to provide energy in a time of crisis because business people from the filling station man up and down do not know where they stand, and they could not invest money with any degree of certainty to make any given amount of money as a return on their investment.

All we would have done would be a complete nullity eventually and stricken down by the Supreme Court. Why do that when we have an effective law to enact the things in this measure and pass an effective tax on windfall profits, rather than an unconstitutional law?

Mr. Nelson. I agree. We are going to have opportunities on the floor, either with bills from the Ways and Means Committee or the Committee on Finance, or the debt limit, and we will all have an opportunity to offer amendments, to debate, and vote on all the propositions we are interested in, after there have been hearings.

I wish to interject at this point that I give Representative Staggers credit for having raised the issue and waved the flag. He was the first person around the Hill to do it. I could not have drafted the bill. I could not draft an excise profits tax bill. I could draft one on the depletion allowance; we just repeal it. That is simple enough. But Representative Staggers raised the issue and I give him credit for it. But it is an impractical proposal **[Sec. 110]** that cannot be administered and I do not think we should pass it.

If they go back to conference and cannot modify it in any way—and I am not critical of the chairman of the committee or the distinguished Senator from Maine, two of the leading environmentalists in this country; I am not critical in any way about the failure to get what

I would like to see them get because I have been in conference and had to come back with modifications I did not like. But I think now, as to the tax provisions, since there are hearings now scheduled and we are going to have a chance to act on it, it is unnecessary to have this provision.

The argument for it **[Sec. 110]** is that it puts a burr under the saddle, so to speak, and it makes the administration come forward to support something, because they could not support this one. I think that is a risky approach, but if it is passed and the President signs it, we surely are going to pass a piece of legislation to replace it after all kind of confusion in the country because that proposal will not work, and no one that I know, no tax expert, will tell you that this proposal will work. So why pass it and then pass a substitute for what we did already, if, in fact, the President signed it and the Supreme Court declared it constitutional, both of which I think are doubtful.

Mr. LONG. There is one thing the Senator should think about when and if he gets ready to pass a constitutional, realistic windfall profits tax proposal. If this measure is on the books, he will be accused of doing something to help the oil companies because then the charge will be that the 100 percent windfall profits tax—which is not a tax at all; it is a mirage—but this 100 percent windfall proposal would apply to the companies except for the excise profits tax which we would be passing, and they will contend that it would be better for the oil companies than what is then on the books. There is a question. I know what is on the books would be a nullity.

Mr. NELSON. I shall vote on the floor of the Senate for taxes on the oil companies that will be effective and constitutional.

I would like to ask the Senator from Louisiana if it is the Senator's intent to send to the floor some tax bill, if he has a majority of support, upon which we will be able to debate and offer our amendments at some early date.

Mr. LONG. Yes.

Mr. NELSON. May I ask one other question? There is a provision **[Sec. 116]** here which authorizes $500 million that the President may spend at his discretion for the purpose of extending additional unemployment compensation to employees who have lost their jobs as a consequence of any action taken under this Energy Act; this is to say, if some wholesaler is denied oil and has to lay off two truckers, they would qualify under this. I hope this goes to conference and that the provision stays in. If it should happen the bill is not reported from conference, would the Senator from Louisiana support a proposal, at least as good as the one here, to a tax bill which he will report out of committee?

Mr. LONG. I certainly will. I hope we will do something more effective than that. I hope we will be able to find something more effective with respect to people who lost their jobs due to the energy crisis.

Mr. NELSON. I would like the record to show that I discussed the issue—I could not get hold of Mr. George Shultz, because he was out of town, but I talked to Mr. Paul O'Neill, his deputy at OMB, and he assured me that in a matter of days the administration will be recommending an unemployment compensation measure, that will be broader than the one that is included in this bill, which limits the benefits only to those who lose their jobs as a direct consequence of some oil alloca-

tion that has been made as a decision under the authority of the current conference report. In other words, it will apply across the board, because, you know, Mr. President, it is just as hard to be unemployed if one is among the 20,000 Chevrolet workers in Janesville, Wis., who have lost their jobs, not because of the energy shortage, but because General Motors is retooling to make smaller automobiles. So it is just as serious a situation whether one loses his job for that reason or any other. But he assured me that they will be offering a proposal that will have a trigger provision that will apply unemployment compensation benefits to every concentrated area of unemployment.

Their estimate, as of now, looking to the future, which he knows may or may not be correct, is that they are talking about unemployment compensation in the neighborhood of $600 to $800 million. So it is a broader bill, covering people who have lost their jobs for whatever reason, and they are estimating that it will have from $100 to $300 million more in it than the one that is authorized here.

So in any event, if the conferees did not come back, or if they broke up because of nonagreement, we would still have an unemployment compensation bill that will be before the House Ways and Means Committee and the Senate Finance Committee.

Mr. LONG. Mr. President, I expect to support that kind of measure. My only question is if we can do better than that. I think we can. If necessary, I would favor it.

The Senator knows that the Senator from Louisiana has helped the Senator from New York to get insurance bills through. He has helped the Senator from Connecticut get unemployment compensation bills through. I will be glad to join the Senator from Wisconsin in helping the Senator from Washington (Mr. Magnuson), as he was helped in getting an unemployment insurance bill through when they had a high amount of unemployment in those States. So we are together on that. The only thing we are talking about is whether we ought to encumber what is a good bill with provisions that should not be in the bill, unconstitutional provisions, measures that would impede the effectiveness of what we ought to be trying to do.

Mr. NELSON. I agree with the Senator. I emphasize, for the third time, if the House were unwilling to make any accommodation, based upon the history that has passed since the last conference, then I think we are going to have to drop the conference report and then move very quickly to pass a very effective, sensible, administratively effective tax law, to take the place of the one in this bill.

Mr. LONG. I thank the Senator.

Mr. MAGNUSON. Might there be under this energy bill a shift of electric power from one area to another?

Mr. JACKSON. Yes, there could be.

Mr. MAGNUSON. Since this shift would be on the basis of one area conserving power, is it contemplated that the area to which it is shifted would also conserve power in at least a like amount?

Mr. JACKSON. Yes, we would anticipate each area would conserve a like proportion of its power.

Mr. MAGNUSON. In the Pacific Northwest, we serve a lot of interruptible industrial load. Would this interruptible load be regarded differently from firm load, or would it be regarded as the same in considering any shifts in power?

Mr. JACKSON. Those loads would be regarded the same as in the Pacific Northwest. For example, for planning purposes and the proposed new rate schedules of Bonneville, there is no distinction between interruptible and firm loads.

Mr. MAGNUSON. At the present time, Public Law 88–552 does not permit hydropower from the Federal system to be shipped out of the Pacific Northwest if it can be used by a market in the Pacific Northwest. Would this law (Public Law 88–552) take precedence over any shifts under this energy act before us today?

Mr. JACKSON. Public Law 88–552 would take precedence. Therefore, if there is Federal hydro energy available, it can be applied to firm or interruptible loads or to any loads in the Pacific Northwest. There could not be any order for it to be shifted to another area under the provisions of this bill. However, with conservation there possibly could be a surplus of energy in the Northwest that otherwise would not be available and that surplus might be shifted to another area.

Mr. BIBLE. Mr. President, **section 118** of the bill would establish special procedural requirements, including minimum time of public notice before promulgation of final rules or orders, and a right to present oral views and arguments concerning proposed rules or orders.

I am concerned about the extent to which these special procedural rules would apply to rules and orders issued under the Emergency Petroleum Allocation Act. Would their new procedural requirements apply, either retroactively or prospectively, to rules and orders promulgated under the allocation act?

Mr. JACKSON. I will be pleased to respond to the gentleman's question. **Section 118(a)** is clear in specifying that these special procedures apply only to rules and orders issued under this title that is, title I of this bill. And there are in the same section several exceptions, including the new subsection 4(h) of the Emergency Petroleum Allocation Act added to this bill. Thus, the special procedures do not apply to the Emergency Petroleum Allocation Act.

Mr. MCINTYRE. Mr. President, I will not vote to recommit the Emergency Energy Act despite some serious reservations about its approach to the problem.

I believe it is critical for the Congress to go on legislative record right now in clear opposition to the unconscionable profiteering made possible by the energy crisis.

American's oil barons must be put on notice that the American people will not tolerate being taken advantage of in this way.

That said, let me add that I have some doubts about the way in which this particular bill goes about solving the problem. I am by no means convinced that it is possible to construct tax laws tight enough to put an end to windfall profits. I believe this is true because the legislation moves to treat a symptom and not a cause.

The problem, or cause, is not windfall profits themselves. It is the system which produces these profits. It is a system characterized by special privileges, tax loopholes, and monopolistic practices which make it possible for oil companies to earn excess profits in time of crisis.

In short, it is a mollycoddled, spoiled industry which needs a healthy dose of old-fashioned free enterprise.

The challenge for Congress, Mr. President, is to administer the dosage with caution, making sure the cure is strong enough medicine for the oil giants, but not so strong as to kill off the little independents who pose the only element of competition left in the industry.

Mr. President, we face tough questions. Is percentage depletion as it is currently used a satisfactory incentive to oil production? For small companies and large ones as well? Is expensing of intangible drilling costs a viable means of encouraging investment in oil well drilling? Is the foreign tax credit a useful tool for American-based oil companies or is it little more than a billion dollar giveaway?

Let us create a quiet, reasonable atmosphere in the next few months and get down to the business of answering these questions. The American people want results, not rhetoric.

I applaud the thrust of this bill—to put a stop to profiteering which is today accompanying the energy crisis. But I believe the problem is more serious than can be solved by a tax on excessive profits. It has to do with the structure of the energy industry and this is the year to attack that problem with all our might.

Mr. HANSEN. Mr. President, I strained my voice in speaking of the windfall profits section of this bill at the end of the last session and I will, therefore, make my remarks brief.

I have distributed a letter to each of you which summarizes my reasons for believing that the act should be sent back to conference for deletion of the windfall profits provision.

Some of you may have noticed at the top of the front page of last Sunday's Washington Post an article that was headlined "Sampling Shows 'Massive Ambiguities' Clouding America." In an interview, a Mississippi doctor told a Washington Post reporter that he thought America had been drifting toward socialism for some time. He said:

> The more the government regulates, the more inefficient the economy becomes; and the less productive the economy, the more regulation you need.

I am not defending industry profits although I do think they have not been excessive or at the levels necessary to develop the domestic energy resources we must have. What I am saying is that the concept of confiscation of such profits is the wrong way to go. We may need a reinvestment requirement to insure the quickest possible development of our abundant energy resources and a return to energy self-sufficiency. But a continuation of the policies that have brought the Nation into this dilemma through application of further stifling price ceilings and controls will do nothing but continue and worsen the shortage.

As the distinguished senior Senator from Louisiana (Mr. Long) and the able ranking minority member of the Senate Interior Committee (Mr. Fannin) have said, I would hope that Senators here today after contemplating the hastily drafted legislation before them would vote to recommit the bill so that we might hear further from experts in the tax area who have already analyzed the windfall profits section as unconstitutional and unworkable.

As Henry S. Houthakker, professor of economics at Harvard University and a former member of the Council of Economic Advisers, recently said:

> The consuming nations should not assume they are at the mercy of OPEC, even though for the moment they can do little except curtail consumption. All the

talk about energy being "essential" should not blind us to the fact that it is subject to the laws of supply and demand. These laws may take some time to operate with full effect. But they have not been abrogated. When the governments of the importing countries assemble at President Nixon's invitation they should not be misled by industry projections of an inexorable rise in demand and a lack of productive capacity in North America. Consumption is already responding to higher prices, and supply will catch up too.

But supplies will not increase but rather stagnate under a windfall profits section that eliminates profits and incentives.

I know of no better example than Federal regulation of the wellhead price of natural gas since 1954 that has contributed so largely to our present energy dilemma.

Let us not compound that error.

And in the words of Vermont Royster of the Wall Street Journal, there is another reason for the public suspicion that it is some kind of a dire plot, one that has nothing to do with the facts and one that cannot be allayed by facts:

If we have a beef shortage a lot of people simply aren't going to believe that it's because of a failure of the feed crop, or because consumer affluence has increased the demand beyond the supply, or because inflation has made it impossible for farmers to grow beef at the ceiling price, or whatever the real reason may be. It's got to be a plot. "They" are conspiring to gouge "us."

The "they" varies with circumstance. Sometimes the impulse is to hang the butchers, they being closest at hand. Or maybe the middle-men, the meat-packers and wholesalers. But somehow when mysterious things happen there must be a "they" out there somewhere plotting against "us." In olden days the cure was to burn a witch.

Perhaps we do have here proof of the prevalence of witches. That is maybe all those oil company people have been clever enough to corner the whole world's oil supply and are gloating over all those exorbitant profits they are going to glean from wrecking the economies of the United States, Great Britain, Japan and practically the whole Western world, blithely unconcerned about the risk of being put to the torch.

If that isn't ridiculous, it's at least a puzzlement. For if it's true that all those exorbitant profits glitter while oil stocks languish there must be an awful lot of dumb people on Wall Street.

So concludes Mr. Royster.

I hope we in the Senate will do better than burn at the stake the only ones able and willing to solve our energy problems.

Mr. BAKER. Mr. President, I want to take this opportunity to reaffirm my support for the conference agreement on S. 2589 and to state my opposition to the motion which has been made to recommit this bill for further discussion by the House-Senate conference.

Many issues have been raised in criticism of the legislative product of that conference and I am sure that that product is far from perfect. The conferees on this bill worked long, hard hours during the last few days before the adjournment of the first session of this Congress in order to produce an emergency act in response to the energy shortage which faces this Nation. Although the dimensions and details of that energy shortage have at least appeared to change over the past several weeks, I do not think there can be any serious doubt as to the need for emergency action during the next several months to deal with shortages of gasoline and other petroleum products. On last Friday the Federal Energy Office issued a news release quoting Energy Administrator Simon as saying:

The energy crisis is here and it is not contrived. It is a global crisis that literally threatens the integrity of the world economy, to say nothing of our own national security.

Frankly, I find it disturbing that we are at this time urged by the administration under the threat of a veto to recommit and reconsider action on this proposal. I recall the urgent pleas of Energy Administrator William Simon in an 11th-hour appeal to the conferees to pass some form of energy emergency bill. The administration presented at that time several points of criticism which the conferees took up and considered. Several of these items were compromised and others represented matters on which the Congress and the administration have basic disagreement. I do not feel that under these circumstances a recommittal of this bill to the conference would produce progress in these areas and, indeed, further consideration of the measure could threaten provisions of the report upon which agreement was reached.

I would discuss briefly some of the criticisms which have been leveled at the conference report. It has been stated by critics of the report that the administrative provisions contained therein are inconsistent with the administration's recently created Federal Energy Office. **Section 103** of the conference agreement established a Federal Energy Emergency Administration, which would endure only until May 15, 1975. **Section 103(a)** states that the agency so created shall continue "unless superseded prior to that date by law." It is clear, therefore, that the Congress could, and I am sure would take steps to insure that further legislation to create an administrative framework in response to the energy crisis would not duplicate or overlap the authority of this bill. Furthermore it is my opinion that the authorities and responsibilities of the Administrator established under this section are not inconsistent with the parameters of the Federal Energy Office and in my opinion this administrative framework could be folded into the existing structure.

Section 110 of the conference agreement which provides for a prohibition against windfall profits and price gouging has come under intense criticism by both the administration and by the oil industry. It is clear that there is a consensus in the Congress that some action must be taken to prevent windfall profits. I think it is also safe to say that the Congress is nearly as unanimous in its feeling that **section 110** of the conference report is a badly flavored mechanism for accomplishing that purpose. In response to criticism lodged against this section by the administration prior to its reporting, an effort was made in the conference to delete this provision. When this effort failed a motion was made and accepted to postpone the application of this section until January 1, 1975. This postponement was provided in order to afford the appropriate committees of the House and Senate the time and the opportunity to consider this proposal and to develop legislation thereon. Since it is clear that such revision is necessary and would receive rapid endorsement of both bodies, **section 110** of the conference report will serve the purpose of committing the Congress to such action without delay. For that reason, and with the understanding that I shall support revision of the section to make it more effective and less onerous, I oppose those who would recommit this bill on this issue.

I am deeply disturbed by the assertion of critics of the clear air provisions **[Title II]** of the conference report that these provisions go too far and threaten the integrity of the Clean Air Act. There are no Members of this body more dedicated to the preservation and protection of our environmental protection programs than Senator Randolph,

Senator Muskie, and myself. During the tense days of conference we deliberated as a subconference on these issues with Congressmen Paul Rogers and John Hastings and reached a compromise which reflects, I feel, a deep regard for the Clean Air Act, a real concern for the impact of air quality strategies, and a pragmatic understanding of political realities. It is my opinion that those who seek to recommit this report for the reconsideration of **title II** do not understand what that title does or the situation which created the need for such a measure.

The clean air provisions of the conference report as they apply to stationary source controls are drafted very narrowly to apply only to such facilities that have the ready capacity and necessary plant equipment to convert to coal and are required to do so, because of the unavailability of low-sulfur fuels. If the source chooses by November 1, 1974, to make a long-term commitment to coal, they may obtain a revision of their State implementation plan so that they might be permitted to continue burning coal. This could potentially result in a violation of primary standards and in that connection the Administrator of EPA is given broad powers to protect the health and safety by preventing conversions or by requiring interim control strategies.

In return for the plan revision granted by the section, these converted sources must undertake to meet emission standards through the use of continuous emission reduction equipment or through contracts for low-sulfur fuels by 1979, 18 months after the deadline presently contained in the law. **[Sec. 119(b) CAA.]**

Two things motivated the conferees in providing this long-term provision. First, the realization that we cannot call upon the coal industry to make the capital investment necessary to enable them to meet our emergency needs without making a commitment commensurate with theirs. Second, that low-sulfur fuels strategies employed by the States to meet air quality standards may in the future, as they have now, prove undependable; and thus, revision of State plans toward a strategy of continuous emission control or toward the use of low-sulfur domestic fuels will improve the dependability and safety of air quality programs.

The deadline extension in the provision was inserted in recognition that present sulfur emission control technology is in a rudimentary state. To mandate such systems as an alternative to present strategies without providing development time for the technology could result in prematurely eliminating alternative approaches. I am not at all convinced for instance, that limestone scrubbing systems with their substantial solid waste production are the ultimate answer. For those plants choosing to go to low-sulfur coal as an ultimate strategy, the Administrator may require implementation as soon as practicable.

Additionally, I believe that the proposed changes in the automotive emission standards represent a viable compromise which permits us to proceed most of the way to eliminating the automobile as a significant contributor to air pollution. **[Sec. 203.]** At the same time, I expect the domestic and foreign automakers to use the extension of the 1975 interim standards to maximize fuel economy and drivability of automobiles before they are required to go the next step to the full 90-percent reduction from the 1970 levels. I also look forward to the 2.0 grams per mile standard for nitrogen oxides to encourage the automakers to ex-

ploit fully such developing technologies as the stratified charge engine, the diesel, and still more exotic means of propulsion.

Mr. President, I am convinced that my colleagues in the conference arrived at the best possible resolution of these issues related to the Clean Air Act. This accomplishment, which was made doubly difficult by the press of time, ought not be undone in the vain hope that by recommitting this bill, we can avoid the hard choices imposed by the present energy emergency. I urge each of my colleagues to vote for the conference report as proposed.

Mr. NELSON. Mr. President, are we in the situation that the distinguished Senator from Kansas and I are on the same side?

Mr. DOLE. For the first time.

Mr. FANNIN. Yes; both Senators are on the same side on this question.

Mr. DOLE. Mr. President, on this matter, I am on the same side as the Senator from Wisconsin (Mr. Nelson). I do not think there is any doubt—that everyone is concerned about the energy problem. I know the people of Kansas are concerned, for I returned from there only this morning. Some are not convinced that we have one. Some are convinced that it is contrived. Some are concerned about excess profits. But they believe a serious situation exists, and they feel something should be done to deal with it—in an effective and responsible manner.

Mr. President, the job of equipping our country with the programs and plans required to manage the energy crisis is vitally important.

This Nation faces a great challenge over the remainder of this decade and beyond as we strive to reestablish our self-sufficiency in energy. Success in this effort is essential, for we must eliminate the intolerable drain on our balance of payments caused by the cost of foreign oil imports, and we must end our vulnerability to oil embargos and other foreign manipulations which threaten our military and economic security.

It is particularly unfortunate, therefore, that legislation needed to manage our energy effort has become entangled in dispute, disagreement, and no small amount of political gamesmanship.

I believe this situation is in large part due to the haste with which the Energy Emergency Act was considered in the House and Senate. This bill is highy complex, contains far-reaching grants of Presidential authority, and will directly affect nearly every citizen of this country. In these respects I believe it exceeds even a general tax reform measure in impact. But in contrast to the pending tax reform bill—which has been the subject of months of hearings in the House and has yet to be taken up on the House floor or in the Senate Finance Committee—the Energy Emergency Act was run through committee and floor consideration in the Senate and House in such a rushed and publicity-laden atmosphere that it was impossible to adequately explore its full impact.

Now, after a month-long opportunity for comment, study and assessment of the bill, several of its features are seen to raise serious questions regarding their necessity, their desirability, and their capacity to accomplish the purposes for which they are supposedly designed.

The Senator from Wisconsin (Mr. Nelson) and others have voiced their concern over the consequences of **title II** upon the many years of effort in Congress and throughout the Nation to restore and preserve the environment. In my 4 years of service on the Public Works Committee and its Air and Water Pollution Subcommittee, I was directly involved, under the leadership of the Senator from Maine (Mr. Muskie) in the consideration, drafting and passage of the Clean Air Act, the Water Pollution Control Act, and a number of other key laws which support our environmental programs. As the Senator from Maine knows, many long weeks and months of work went into those laws, and I certainly have great concern that the Energy Emergency Act's hasty changes, modifications, and suspensions of environmentals statutes may do unforeseen damage to these programs—perhaps without accomplishing everything necessary to achieve our energy goals. I cannot say for certain that this would be the result, but at the moment it is difficult to see the results of these provisions one way or another.

I would observe, however, that with experience the winter daylight saving time legislation—which passed Congress with perhaps even less study and factual support than the Energy Emergency Act—gives reason for caution in our approach. The imposition of winter daylight time seems to have done little more than produce widespread inconvenience, disruption, and danger to school-age children. Negligible energy savings have been achieved, and there appears to be growing support for my measure which would bring about the new law's immediate repeal.

I would hope that the Energy Emergency Act will not backfire to a similar extent.

DANGERS OF SECTION 110

However, especially with regard to another area, I believe we are headed for just such a result, only much more serious.

While not wishing to be an alarmist or overly harsh in my criticism, I believe it is fair to say that **section 110,** the so-called "Prohibition on Windfall Profits—Price-Gouging" is one of the most unwise, ineffective, and transparently shallow examples of shoddy legislation to come before the Senate. And this is all the more unfortunate, because it claims to deal with a very serious and deep concern of the American people. There is no doubt about the fact that there is deep concern about excess profits and windfall profits.

In fact, however, **section 110** only plays on the emotions of the people and if enacted would frustrate their legitimate expectations that Congress effectively deal with the problem of profiteering in the energy crisis. **Section 110** would not be effective in blocking unfair economic advantages, and it poses the most dangerous prospect that it would seriously hamper our energy-sufficiency efforts.

It would not be effective because it has no teeth, no real ability to combat the problem of profiteering. It would not even become effective until January 1, 1975. And its only enforcement would be through a slow, drawn-out, and frustrating administrative procedure that is so vague and confusing that even experts in this area cannot say how or if it would even produce any final determinations.

In the second place, **section 110** is so broad in its terms and application that in addition to the "major oil companies" it would cover every

royalty owner, every local jobber, every corner service station operator, and who knows who else in the Nation.

Mr. President, I might say that this point was brought forth in the testimony before the Finance Committee on which the Senator from Kansas serves along with the Senator from Wisconsin. A question was asked directly as to what the impact of **section 110** would be, how far it would go, whether it was limited just to major oil companies, and where we draw a line between the major oil companies, other oil companies, and independent oil companies. But no line is drawn in **section 110**—it is universal and undiscriminating. It would apply to hundreds of thousands of businesses and millions of transactions.

The possibilities for complaints, lawsuits and bureaucratic entanglement are almost unlimited. With it would come almost complete paralysis in every business which involves the sale at "any price" of "petroleum products"—from the Alaska pipeline to the local gas pump.

Now, one might say, so what? It would not make a great deal of difference if some obscure board was studying the prices charged for various petroleum products. After all, they might decide that there were no "windfall profits" involved.

But it would make a very great difference in a country that must maintain a strong, healthy domestic economy, and which must expand its efforts to locate and develop new sources of energy within its borders.

As the Senate Finance Committee, on which I serve, heard last week, the almost certain result of **section 110's** enactment would be a retardation of efforts to meet our energy needs.

Mr. DOLE. Mr. President, aside from these other objectionable features of **Section 110.** I believe it omits an essential requirement for any measure designed to capture excess or windfall profits. It does not contain any provision to channel greater amounts of money into the broader program of energy development. This feature is often referred to as a plowback provision and means that a company is given the choice of either paying a tax or turning that money back into greater efforts to expand our energy supplies or develop better energy technology.

Mr. President, as I said in the Finance Committee hearings last week, it is not possible to step on the gas and brake at the same time and still make progress.

We must be realistic and recognize that operation independence will be successful in meeting our energy needs only if it is pursued in a sensible and constructive manner.

I would guess that those who are voting to recommit the bill will have their motives characterized—and inaccurately—as being in favor of excess profits for the major oil companies. This is a senseless charge. I would only say that as some others have stated, I believe in action against and in taxation on windfall profits. However, let us act in a way that has some sense and meaning.

Of course, steps must be taken to assure the average American that his sacrifices are going to contribute to the national cause and not just fatten some big oil company's profits. Every citizen has a right to expect this, and Congress has an obligation to see that those expecta-

tions are met. And I share in the commitment to provide this protection.

But **Section 110** is a sham and a hoax. It would not protect the average citizen and would in the long run be seriously damaging to the public interest. And it is time to stop using the energy crisis as a political springboard.

Windfall profits, excess profits and the like raise extremely complex and difficult questions. The taxing power of the Federal Government is by far the most appropriate means of dealing with these problems in a constructive and positive manner. No effort to do so, however, should be attempted without the fullest and most careful study. This is not to say that there should be delay, for there should not. But as last week's Finance Committee hearings disclosed measures in this area have the most serious and far-reaching impact throughout the economy.

I look forward to participating in February in the full-scale Finance Committee study of this field. I feel we must move with utmost dispatch to establish the protection needed to combat energy crisis profiteering and in a way which will contribute to—not detract from—the overall energy program.

Therefore, for the reasons I have stated, I believe it is essential that the conference report on the Energy Emergency Act be recommitted for further action that is consistent with the needs of America and the expectations of the people.

Mr. FANNIN. Mr. President, I thank the Senator from Wisconsin and commend him for the efforts he is making to accomplish our objective of relieving the energy situation of this Nation.

Mr. President, I ask unanimous consent that a letter from the President to the minority leader, the Senator from Pennsylvania (Mr. Hugh Scott) be printed at this point in the Record.

There being no objection, the letter was ordered to be printed in the Record as follows:

THE WHITE HOUSE,
Washington, D.C., January 29, 1974.

Hon. HUGH SCOTT,
U.S. Senate,
Washington, D.C.

DEAR HUGH: My conversations with you and other members of the Senate since the beginning of the Second Session have convinced me that the people have made their elected representatives very much aware of the real concern over the energy shortage. It would be most unfortunate if, through an understandable but misdirected response to this concern, the Senate approved the conference version of S. 2580, the pending Emergency Energy Act.

The time and opportunity now exist for refining this legislation which was so hastily put together during the closing days of the last Session. We have been able to make do without emergency legislation thus far, and I urge you and your colleagues to take the additional time required for developing a truly responsible product.

You have already been furnished with a listing of thirteen sections of the bill which present difficulties. Some of these provisions have no place in this bill and should be deleted while others can be modified through the use of reasonable alternatives.

We do not need the Federal Energy Emergency Administration proposed in this bill—the Congress itself is close to providing us with a far better organization through separate legislation.

The subject of windfall profits should be addressed through a rational tax scheme using the normal legislative process. I am confident the Congress will quickly complete the work on a windfall profits tax.

unemployment cannot be effectively dealt with by a system that seeks to find a tenuous connection with the energy crisis. Rather, it should be identified and treated swiftly for its own sake. We have an alternative for accomplishing this through a system which would respond in terms of the labor market conditions where the affected individuals work, regardless of the cause of unemployment.

I am already committed to a proposal which will provide both Government and the public with needed information from the oil industry—without the indiscriminate burden of work and the flood of unwieldly data which this bill would produce.

The pending Emergency Energy Act can provide useful authorities in helping resolve the energy emergency now before us, but not without further efforts from you and your colleagues.

I understand there will be a motion to recommit the conference report, and I strongly support such action. Should recommital take place I pledge the full support and cooperation of the Administration in working with the Congress to produce the result we all desire.

Sincerely,

RICHARD NIXON.

Mr. FANNIN. Mr. President, as I stated to the Senator from Wisconsin, the President to my knowledge agrees that the subject of windfall profits should be addressed through the normal legislative process.

I am confident that Congress will quickly act on this matter.

The Senator from Wisconsin also covered the unemployment problem when he said that it cannot be effectively dealt with in this manner.

Mr. President, the chairman has sounded the alarm for immediate action on the conference report S. 2589. Senator Jackson said:

We must act now to provide the executive branch with the means to take needed actions in the country's interest.

For this reason he urged the Senate to vote in favor of the conference report.

I take note of the important staff analysis that the chairman of the committee ordered printed.

On page 76 of the report concerning natural gas policies, issues and options, the following is stated:

In the face of such uncertainty, it is the hope of the "windfalls" on some ventures that encourages producers to bear the risk of losses on others. For this reason, a system that rigorously seeks to expropriate all "excessive profits" from exceptionally profitable investments can be expected to reduce the willingness of producers to take on the risk of losses from other ventures. Accordingly, such a regulatory regime could be expected to have a depressing impact upon investment in proportion to the variability and to the uncertainty of future costs.

I agree with the chairman of the committee in the report's statement that:

In short, a part of what are commonly called "windfalls" plays an important role in the energy economy. Cost-based price ceilings do not prevent consumers from paying for some extraordinary profits. Nor would it be desirable for any system of regulation to do so. To the extent that extraordinary profits or economic rents are due to geology, they are not windfalls strictly speaking, but are used to elicit exploration and development efforts.

That is exactly what we are trying to do. We hope that this legislation will be approved and that it will accomplish that objective.

Mr. President, I commend the distinguished chairman of the committee for his statements on the Face the Nation program yesterday.

I was very impressed with what he had to say. He very effectively brought out the necessity of a free enterprise system.

I agree with the chairman that we need legislation. Unfortunately, the conference report not only fails to give the President the authority he needs, but it contains provisions which would hinder rather than enhance efforts to solve the energy crisis.

The chairman of the Interior Committee is asking his colleagues to support the action of the conferees which he himself recognized as inadequate, an overreaction, and just plain bad law. As it might be recalled, the day before we adjourned in December the chairman sponsored a substitute for the conference report, recognizing at the time its superiority to the conference report. The Senate supported him in this moderate, reasoned compromise.

That substitute which was sent to the House as a rider to the Wild and Scenic Rivers Act eliminated the windfall rebate provision because it was unworkable. The chairman knew it was unworkable.

That substitute modified the information disclosure provisions because they were unworkable as contained within the conference report. The chairman knew they were unworkable.

That substitute eliminated the FEA reporting requirements because they were not only infeasible but also unconstitutional. The chairman knew this to be the case.

Several other provisions in the conference report were also modified because they were unworkable. The chairman is familiar with these provisions.

At the time the compromise substitute was adopted we commended the chairman for his recognition of the infirmities of the conference report and his leadership in preparing a sensible substitute. Now that some of the powerful elements of the media have spawned a movement directed toward an unmitigated attack on the energy industry of the United States, it appears as though the chairman has decided to lead the antiindustry demagoguery by shifting his ground. Now he is calling for support of a conference report that a month ago he repudiated. The issue of supplying this Nation's energy needs is one which should be above partisan politics, but the chairman, despite his better judgment a month ago, now appears to have decided to put aside reasonablesness and the welfare of energy-short U.S. citizens.

Instead he has chosen to play politics with energy.

Mr. President, this is no time to play politics with energy.

Playing politics by adopting the conference report is irresponsible.

Playing politics by adopting the conference report is a disservice to energy-short Americans.

This conference report is clearly unacceptable to the administration. Mr. President, this conference report was drafted in the late hours of the last session in that climate of uncertainty and near panic. We are all one month older and we should be much wiser as far as the energy crisis is concerned. We should all ask ourselves: Is this the mechanism that is needed today?

There is indeed an energy crisis, yet the predicted severity of the energy crisis has not come to pass, due to the effectiveness of administration energy conservation measures and to a mild winter.

The Federal Energy Administration is functioning under the strong leadership of Secretary Simon and he is equipped with existing laws

which will suffice for the time being. Let us not now rush into any new legislation which may possibly hinder or interfere with that effort.

During the recess the administration analyzed the conference report and has clearly spelled out its many deficiencies.

Mr. President, I ask unanimous consent that the memorandum be printed in the Record in full at this point.

There being no objection, the memorandum was ordered to be printed in the Record, as follows:

EMERGENCY ENERGY ACT—S. 2589: CONFERENCE VERSION

ADMINISTRATION COMMENTS

1. **Section 103.**—Establishes a Federal Energy Emergency Administration, into which all powers under the bill (and some previously existing powers now held by the President) are placed.

Establishes an independent agency with virtually no administrative authorities, no viable staff structure, no funding authorization, and no provision for continuity with existing activities under FEO. Would establish a marginal, if at all operable, agency.

Should be deleted in favor of well-tracked, separate Congressional action (S. 2776, passed Senate; H.R. 11793, reported to House Floor) proceeding on course.

Deleting this provision should also be accompanied by deletions of "Administrator" throughout the bill and substituting "President" where appropriate.

2. **Section 105.**—Provides a staged system of Congressional approval/disapproval for energy conservation plans proposed by the Administrator (President): (a) until March 1 plans are effective immediately, subject to disapproval by either House within 15 days; (b) between March 1 and June 30 plans must lie over for 15 days before taking effect, subject to disapproval by either House; (c) after June 30 plans must be approved through legislation.

The staging in this bill poses administrative difficulties. While we do not object to Congressional participation in conservation plans, there should be a uniform system of submission to Congress which permits the voicing of objections within 15 days. The objective would be to provide consistency and yet allow sufficient administrative flexibility.

3. **Section 107.**—Requires promulgation of a contingency plan for allocating energy-related supplies and equipment, which must be submitted to Congress before it can take effect under the same staged system applicable to conservation plans.

This should be authorized, as with conservation plans, rather than directed to be done within 30 days. This will permit greater responsiveness to rapidly changing conditions.

The submission to Congress ought to be modified as suggested with respect to Section 105, above.

4. **Section 110.**—Provides a mechanism designed to discourage windfall profits and price gouging. The Renegotiation Board is established as the agency which will receive petitions and complaints from "any interested person" who believes that in any transaction involving petroleum products the seller has obtained a windfall profit (as defined to include excesses beyond "reasonable profit", which the Board will determine considering several listed factors). Further judicial review is available. This procedure will become effective one year after the bill's enactment, but will then retroactively cover all transactions since enactment. During the intervening year the President is directed to exercise his price control authorities under existing law to avoid windfall profits.

The administrative and judicial workload which would be produced by the ad hoc type procedure strongly argues against its adoption. There would be major judgmental and procedural problems in determining price-cost relationships for individual transactions, producing both inequities and multiple appeals. The intervening year would additionally produce great uncertainty pending the effective date of the Renegotiation Board procedure and its retroactivity.

Immediate and effective action to preclude excess profits can be taken through an appropriate taxing scheme, which will be equitable and yet allow incentives for exploration and development. The Administration's windfall profits tax

proposal will shortly be before Congress, and we urge deletion of this provision pending enactment of such a tax.

5. Section 112.—Requires factors of equity and fairness to be considered in taking action to allocate or restrict energy use.

Largely duplicates other similar requirements stated in Section 4 of the Emergency Petroleum Allocation Act. To the extent it goes further in speaking against arbitrary action and discrimination, could give rise to litigation since allocation can be by definition somewhat arbitrary and discriminating.

Proviso in 112(a) would require U.S. to allocate only 3 days' supply of energy to British firms in U.S. so long as England operates on a 3-day work week. This proviso and entire section should be deleted as unnecessary.

6. Section 114.—Deals with the potential antitrust difficulties which may arise through voluntary agreements and plans of action among members of the petroleum industry in order to assist the Government in resolving the energy emergency. Involves the Attorney General and the Federal Trade Commission in administering and monitoring such agreements or actions.

This provision is unduly restrictive and burdensome, to the extent that it would discourage potentially helpful voluntary agreements and plans of action.

Section 314 of S. 2589 as passed by the Senate takes a more reasonable approach which is favored by the Justice Department over the present provision. It would provide more effective results, and therefore should replace the present conference language. In the alternative, existing law may be relied upon.

7. Section 115.—Provides authority to impose restrictions on exports of fuels and related products.

In effect this duplicates existing authority now being exercised under the Export Administration Act and the Mandatory Petroleum Allocation Act. To avoid confusion this section should be deleted.

8. Section 116.—Provides for consideration of and assistance to those unemployed as a result of the administration of this legislation.

Unemployment should be avoided and eliminated where possible as an evil in itself, not through an attempt to determine its cause. Determining who fell within the scope of such a program would be impossible. It would be far preferable to enact the broad unemployment insurance program proposed last year by the President, which would assist all unemployed.

9. Section 117.—Provides for involvement by the Secretary of Transportation in a national carpool effort through grants and other assistance administered through an Office of Carpool Promotion in the Transportation Department.

This provision is unnecessary because of the Emergency Highway Conservation Act enacted just prior to adjournment, which provides sufficient authority to carry out the objectives of this provision.

10. Section 118.—Provides complex procedures for administrative and judicial review of rules and orders under this legislation.

Close study during the recess has raised a number of ambiguities and inconsistencies which seriously affect the ability of any organization to operate under this section. It is also difficult to determine to what extent this section applies to other sections of the bill. Because of the potential confusion which this section would create in its administration, deleting it and permitting the Administrative Procedures Act to apply in the ordinary course would be the better action.

11. Section 124.—Requires the promulgation of a regulation requiring persons doing business in U.S. engaged in exploring, extracting, and refining for petroleum, natural gas, or coal to provide detailed reports every 60 days on energy supplies. Retail operations are exempted from reporting and further exemptions may be granted persons where they now provide similar data to Federal agencies.

This requirement will place a huge administrative burden on persons engaged in such businesses as well as the Government, even through such data will not be needed bimonthly on such a comprehensive basis. On far more *selective* basis, the additional data not now collected by the Government can be gathered to develop the necessary information on petroleum, natural gas, and coal supplies in the energy development process.

We feel strongly that additional data is required from industry, and the Federal Energy Office has already instituted a plan to collect the appropriate data. To insure prompt collection, there is a need to carefully define the types of information needed and how it should be made available consistent with the preservation of full industry competition.

The Senate/House FEA bills have a general authority provision that provides the Administrator with authority to require reports from persons in the energy

business. In addition, the Administration plans to submit draft legislation to the Congress for authority to gather the necessary data on a selective basis.

12. **Section 203.**—Provides with respect to automobile emissions that (a) interim standards for emission of carbon monoxide and hydrocarbons applicable to 1975 model year light duty vehicles and engines shall be extended to apply also to the 1976 model year; (b) the Administrator of EPA may extend these standards for one additional year under certain circumstances; and (c) that standards for oxides of nitrogen applicable to 1975 model year (3.1 grams per mile) shall also apply to the 1976 model year, and that the standard for the 1977 model year shall be 2.0 grams per mile.

The interim 1975 standards for hydrocarbons, carbon monoxide and oxides of nitrogen should be extended *now* for 2 years—to cover model years 1976 and 1977—so that there will be a steady target for a known and fixed period of time enabling manufacturers to concentrate on maximizing gasoline mileage. Extending the standards for 2 years would have no significant adverse impact on our progress in improving air quality.

13. **Section 206.**—Requires (a) a study and report to Congress within 6 months of potential methods of energy conservation; (b) an "Emergency Mass Transportation Assistance Plan" to expand and improve mass transit to be submitted to Congress in 90 days; and (c) a study of a proposed high-speed ground transportation system between Tijuana, Mexico and Vancouver, Canada to be reported to Congress and the President by December 31, 1974.

The "Emergency Mass Transportation Assistance Plan" contemplates a Federal program of operating subsidies for mass transit, which we strongly oppose. The appropriate Federal concern should relate, in our view, to extending service for the purpose of shifting riders from autos to transit, which studies show subsidies tied to fare reductions would not tend to accomplish.

The Transportation Department has already studied the Tijuana to Vancouver system issue, and has developed information which indicates serious technical and economic problems. Rather than devote additional resources to further study, it would seem more useful for the Department to discuss their findings with the appropriate Congressional committees.

Mr. FANNIN. Mr. President, to reiterate, let me call to my colleagues' attention five major points elaborating further on the deficiencies of the conference report.

First. The country does need energy legislation but not within the next few weeks. The administration is meeting this challenge head on and performing well.

Second. The conference report contains provisions which will complicate—frustrate—and neutralize the efforts of the administration. The conference report if enacted will create a climate of uncertainty and spur litigation on every front which will cripple the very efforts that are being made to promote self-sufficiency and bring new sources of energy on line.

Third. The bill was written in haste and prompted by inaccurate predictions.

Fourth. There is a definite need to meet the questions of windfall profits, data disclosure, and congressional oversight of executive action. We owe it to our Nation to take the necessary steps to insure that the legislation we pass is justified and has reasonable prospects of accomplishing the purpose for which it was drafted. Until last week, neither the Senate nor the House had had a single hearing on any windfall profits proposal. This scheme as written in S. 2589 has never been looked at by anybody outside of Congress. We have heard no comments from any sector. Something so important and vital as this must be subjected to the normal legislative process that allows full scrutiny.

None of us seek to support an industry in reaping excessive profits at the expense of the consumers of this Nation. Calm heads need to pre-

vail and a system that can identify what excess profits are and prevent them must be adopted. Hasty unreviewed schemes could foul the industry that we must depend upon to search out and find new sources of energy. We must be careful not to penalize and use as a scapegoat that industry, because we in the Congress must take our own share of the blame for not anticipating and preparing for this energy shortage.

Fifth. Many of the provisions in S. 2589 will help provide the tools necessary to deal with the problem. In order to save these provisions we must recommit to conference. I am confident that our colleagues on the House side will feel the same way now that we have all had a brief respite and opportunity to listen to our constituents and heed their advice on this problem. With this change of climate we ought to be able to fashion a more rational and workable bill. It would be pure folly to pass this conference report when we know its shortcomings and when we know we have time to remedy them.

Sixth. The President has prepared an energy package of legislation far more adequate than the conference report now before use.

I urge my colleagues to recommit this conference report and salvage this opportunity to construct necessary legislation.

Mr. TOWER. Mr. President, I would like to take a few brief moments to express to my distinguished colleagues why I am opposed to passage of the Emergency Energy Act of 1973 in its conference form. Although I disapprove of the hodge-podge approach to legislation, I could support most of the conference report in the absence of **section 110**, the so-called windfall profits provision. My opposition is underpinned by the fact that I do not know or, I suspect—does any other legislator know—what the term "windfall profits" means in the context of the oil industry.

This admission should shock no one, since to date no effort has been made in Congress to compile the necessary evidence to determine whether windfall profits, whatever they are, exist in the industry. The only hearings that have been held to date on the subject were before the Senate Finance Committee and the Senate Permanent Subcommittee on Investigations. Hearings before the committee, chaired by the distinguished senior Senator from Louisiana with admirable dispatch, resulted in a determination that section 110 was wholly unadministrable. Hearings before the subcommittee, chaired by the distinguished Senator from Washington, resulted in incomplete evidence since testimony was presented by only seven of several thousand oil companies.

That testimony was also probably inadequate because those seven companies are virtually integrated, and the profit picture of integrated companies could well distort the profit picture of smaller, nonintegrated companies.

At a time when many Americans are asked to sacrifice in order that our supplies of energy are not completely exhausted, we in the Congress should examine with thoroughness any possibilities of excess profiteering within the oil industry. However, I fear that the Congress in its zeal to find a culprit for the current energy shortfall would through this legislation erase profit incentives essential to continued exploration and development of domestic petroleum reserves thus quite possibly worsening the shortage.

It is my position that the Government should not be permitted to control windfall profits when those passing on the enabling legislation

have not the foggiest notion what windfall profits are. To illustrate what we do not know, let us assume that there is a penicillin shortage and a concurrent scarlet fever epidemic, and that pencillin sellers are using their market position to increase their profits—defined for these purposes as return on equity—from 15 percent to 500 percent. I doubt that any of us would permit that kind of profiteering. On the other hand, assume that the profits in the agricultural industry have been about 6 to 7 percent, that farmers are leaving the industry, that a shortage occurs and profits double to 12 to 14 percent, that farmers begin to return to the agricultural industry, and finally that the shortage begins to disappear. Not many rational people would claim, under those circumstances, that the farmers are making windfall profits.

Now no one in Congress knows what the level of oil industry profits have been over the last few years, what the level of other manufacturing profits have been, what the profits in nonmanufacturing industries have been, or what the pending windfall profits proposal will accomplish. The fact that some would have us legislate in this state of ignorance deeply concerns me. As long as the matter has not been committed to the appropriate congressional committees for study, passing the proposed legislation would constitute the most intolerable irresponsibility.

Recent hearings in the Senate Permanent Subcommittee on Investigations confirm that there is a genuine energy crisis—not the result of an oil company conspiracy. The answer to that crisis is to increase domestic supplies. One of the most powerful economic functions of increased profits is to stimulate investment, which translates into increased supplies. But we have before us the specter of Government interference that might well eliminate that avenue of escape from the shortage.

Consider this scenario: The oil industry's profits have fallen below the level of the manufacturing industry as a whole, on the average, for a number of years. Producers have left and are leaving the industry. There is a shortage, and oil profits increase. Producers are returning to the industry, and the shortage begins to disappear.

Then the Government imposes a so-called windfall profits tax, forcing oil profits back to depressed levels. What happens to the shortage in that case? The Government, by its actions, has aggravated the problem, or at least blocked its solution. A bureaucracy, designed to allocate scarce supplies, develops a vested interest in the shortage because jobs depend on it, and suddenly there is a governmental impetus to perpetuate the shortage—for example, FPC regulation of wellhead prices of natural gas.

I do not postulate this scenario as the case, but I do insist that it could become a reality. In Forbes, January 1, 1974, page 54 and the following, we find that the average return on equity over the last 5 years for the Washington Post was 14.6 percent. The comparable figure for CBS was 18.3 percent. During the same period Atlantic Richfield's—Arco—return was 7.8 percent, or about one-half of the Post, and Standard of Ohio earned only 6.9 percent. Now who are making excess profits? I submit that we in Congress do not know, and that we must find out before we legislate on the issue. The people of this Nation have a right to expect no less from their Congress.

Mr. JACKSON. Mr. President, we today commence the final debate on the conference report on S. 2589, the Energy Emergency Act. I

introduced this bill on October 18, 1973. The purpose of S. 2589 is to provide the executive branch with the statutory means to deal effectively with the shortages we experienced in 1973 and with those caused by the Arab oil embargo.

The fact that S. 2589 is not law today is a sad commentary on the leadership of this Nation. It reflects the fact that the special interest groups have a bigger voice in government than the people.

Mr. President, the failure to act on this measure in December could well have been catastrophic but for extreme good fortune in the form of abnormally warm weather which we have enjoyed this winter and the magnificent response of the American people in conserving fuel.

I am appalled that the Congress of the United States has yet to provide the authority for a standby rationing program and for fair and equitable energy conservation programs.

This represents an abdication of congressional responsibility. While Congress delays, the State of Hawaii and Oregon and States in New England are put in the position of having to develop, on a State-by-State basis, rationing and other energy conservation programs to deal with the critical problems they face. But in doing so, they are hampered because they do not have the authority to control or direct the activities of the major oil companies which operate in interstate commerce. The executive branch does not have this authority either, because Congress has failed to act on this conference report.

I think it is about time we acted.

The Senate has made every possible effort to work in a cooperative and bipartisan manner with the administration in order to provide the executive branch with the authority which they acknowledge that they must have to address the energy shortages.

Administration representatives attended and participated in committee executive sessions on October 24 and November 1. They testified in open hearings on November 8. In an unprecedented procedure, they actively participated, at my invitation in committee markups on November 8 and 9.

Our effort has failed. Unilateral efforts on the part of the Congress at cooperation and bipartisanship have been futile.

On October 24, Governor Love and Secretary Morton rejected any proposal that the Interior Committee staff and their counterparts in the executive branch work together to make changes and to amend S. 2589 as introduced so as to accommodate insofar as possible, administration views and needs. Governor Love stated that "I, for one, believe that we should come up with an administration bill, which we are momentarily prepared to do. Secretary Morton stated, "I think we can have a bill within a week."

Mr. President, we have seen no administration bill. The closest we came was when we were provided with what the administration sent up and categorized as a secret "nonbill." We have also seen various disjointed and often conflicting individual agency proposals.

On January 23, the President called upon the Congress to pass a Special Energy Act. I have not seen a draft of that bill either, but as I read the President's message, he is taking for everything that is already in this bill.

What we have seen from the administration is delay, indecisiveness, and obstructionism.

The only positive response of the administration to the energy crisis has been an appeal to the public for sacrifice balanced by a stout defense of the special interests of their natural constituency. For example, the administration has formed a coalition with the interests of big oil to defeat the windfall profits provision of the bill. While I realize this provision is not perfect, it does comprise an action forcing mechanism to assure that long-term tax reform is effected in earnest, and that oil companies are not allowed to reap billions of dollars worth of profits by charging exorbitant prices for gasoline and heating oil.

What is the administration's position? What do they favor? What do they oppose? Based on an unsigned document now in circulation in the Senate which is dated January 17 which purports to be administrative comments on the conference report, they oppose the following sections: 103. Federal Energy Emergency Administration; 105. Energy conservation regulations; 107. Materials allocation; 110. Prohibitions on windfall profits—price gouging; 112. Prohibitions on unreasonable allocation regulations; 114. Antitrust provision; 115. Exports; 116. Employment impact and unemployment assistance; 117. Use of carpools; 118. Administrative procedure and judicial review; 124. Reports on national energy resources; and 206. Energy conservation study.

What do they favor? They favor unlimited authority to implement any or all of the conservation actions in the Draconian list inserted in the record on December 21 by my esteemed colleague from Arizona.

They favor continued price increases as a demand control mechanism although they have not demonstrated that higher prices at the gas pump will in fact reduce demand.

Because of the windfall profits provision [Sec. 110] of this conference report they now profess to oppose unconscionable profits by the oil industry, although their initial proposals would in no way reduce them.

Let us discuss windfall profits a bit further, since the major opposition to this conference report is directed toward their defense. The administration is adamantly opposed to adoption of the windfall profits provision of this legislation. They intend to offer an alternative proposal which will purportedly attain the same end, and I stress purportedly because it will not do so. The administration's proposal is really an excise tax—a sales tax—which will actually encourage the oil companies to charge higher prices and to pass the increased costs on to consumers.

Section 110, the windfall profits provision, does not go into effect until January 1, 1975. If **section 110** does go into effect—and if it is not supplanted by other legislation during the coming year—the windfall profits provision would be retroactive to cover all of calendar year 1974. The House and Senate conferees clearly understood and consciously intended to provide an opportunity of 1 year for the administration and the appropriate committees of the Congress to get together on a Federal law to prevent windfall profits and price gouging which would supplant this provision, and which would be designed to insure against unfair corporate profiteering at a time when the average American family is bearing all of the burdens. The conferees

consciously intended to put a windfall profits statute on the books that would do two things:

First, insure that the administration and Congress make a serious, good-faith effort in the months ahead to legislate on this subject; and, second, to provide American consumers who have paid unconscionable prices to oil companies, brokers, or oil distributors a remedy and a law by which they could recover, beginning on January 1, 1975, any windfall profits.

Mr. President, **section 110** provides that remedy. More important it provides an action forcing procedure whereby the American people can rest assured that the oil industry, the White House, and all those who have traditionally defended the special tax and other advantages the oil companies enjoy, will themselves be in a position of supporting congressional adoption of an excess or windfall profits tax which will prevent unjust enrichment and the accumulation of unearned unanticipated profits in a period of shortage.

If the conference committee had not adopted a windfall profits section in December, I do not believe the administration would have ever proposed legislation on this subject. It was only after the White House learned of the conference committee's action that the administration expressed any interest in or concern about windfall profits.

Mr. President, I strongly urge my colleagues to adopt this interim emergency measure. Early implementation of those provisions will permit more thorough, long-term reforms to be effected without undue haste or pressure, while providing interim authority to deal with current shortages.

Mr. President, I think it is probably useful, first of all, for Members of the Senate to refresh their recollection for a moment about the history of this legislation.

First, Mr. President, in order to try to get some movement on this bill. I moved to lay on the table the conference report, and that motion was voted down 62 to 0.

Second, lest my colleagues forget—and some were not able to be here—in an effort to deal with what the Senator from Wisconsin and the Senator from Louisiana are talking about, the question of excess profits, we took that section out of the conference report, we then took the whole conference report and attached it to a bill that was on the calendar, sent it over to the House, and only 20 Members of the House of Representatives voted for that bill.

Mr. President, every Member of this body who votes to recommit this bill must understand what is then going to happen to it. It is going to die. And, Mr. President, Senators had better decide whether they want to kill all the necessary provisions that are in this bill.

I must say that we have brought together here the most unusual coalition I have seen in all the time I have been in Congress and that is quite awhile. I know of no one who has been a greater conservationist than the distinguished Senator from Maine. He has led the fight for clean air, clean water, and clean land, and I played a small role in that myself.

But when you get one or two conservation groups working hand in hand with the oil industry and the White House, and a peculiar coalition on this floor, which the rollcall will reveal, then I think the American people ought to start asking some questions.

Mr. President, we have had a lot of time taken up here about the renegotiation provisions. I tried to be forthright with my colleagues. I did not claim this provision was the last word in solving the windfall profits problem. We did everything we could to do something about that in conference, and we failed.

I have made it very clear that we do not agree with all the provisions in this conference report, but it is rather amazing to me that we would spend all our time here for this first hour talking about the poor old profit situation. Look at that chart on the easel in the rear of the Chamber. What does it show? It shows that for the first 9 months of last year, the top 16 oil companies and a gain in profits of from a low of 27 percent to a high of 96 percent.

All of the discussion basically has been regarding the unworkability of this renegotiation section. Nothing is being said about all the other provisions in the bill, which I shall come to in a moment. Well, Mr. President, if there is anything that is stirring the conscience of America, it is the unconscionable profits and, Mr. President, unconscionable prices.

I say unconscionable prices. How many Members of this body realize what has happened to the price? Forget about Arab oil; I am talking about the price they are getting here in the United States for oil.

A year ago, domestic crude was $3.80 a barrel. For old domestic oil, they are now getting $5.20 a barrel, and for new domestic oil they get $10.35 a barrel. Let us not take that out on the Arabs; that is the price here.

When I asked the seven major oil companies how, with a tiny increase in sales volume, they reached those stratospheric heights of profit, they said they made it on the price of crude oil.

Mr. President, the pricing problem alone is doing great devastation to the American consumer, the person who goes to the gasoline station, the person who has his oil tank filled up to heat his home.

In addition, Mr. President, there has never been a greater threat to our free private enterprise system here in the United States than the terrific increases in fuel costs charged to American industry. It is even worse, as we know, in Japan and in Western Europe. This is what we ought to be talking about. What are we going to do about that?

Mr. President, if we recommit this bill, we are going to delay for a long period any real action to prevent price gouging and profiteering, and I think the Senate should understand that.

I have a high regard for my colleague from Arizona, who read the letter from the President. But, as in the case of the energy message that was sent up, Congress has acted on all but one item, in one form or another. It is all listed; we will put it in the Record if anyone wants to see it.

That was the new energy message. But it was against many of the things that were mentioned in that message, Mr. President, that the President, through his emissaries, waged one of the greatest lobbying efforts of all time. The administration, during the closing days of the last session, opposed the following: They opposed action on windfall profits, opposed the section in this bill on unemployment insurance, opposed the provision in this bill that requires disclosure on the part of the industry, opposes the opportunity for congressional review dealing with such matters as conservation.

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Now they are all for these things, Mr. President, that is fine. I welcome that. But I think we all ought to understand that had it not been for this emergency bill and the overwhelming vote in the House, and the earlier overwhelming vote in the Senate, there would not have been this change in point of view.

I would also point out now, so my colleagues will fully appreciate what they are doing and cannot come around later and say, "Well, I didn't know we had all these other things," that is what they are doing, if they vote to recommit this bill, is throwing the baby out the window with the bath water.

Let me emphasize what is being thrown out here. The first thing is, if there is anything that has hurt the American people it has been their recent experiences at gas stations all over the country. My colleagues have had lots of mail on this. Why, in Georgia one company closed 400 stations and, I gather, would not even discuss the matter with the two U.S. Senators. **Section 111** in the conference report affords protection to franchised service station dealers from arbitrary cancellation by major oil companies.

How many Senators want to go on record to take that section out? That is what it will amount to, because they are killing the bill. There is no use dealing with the House. The House will not change. The bill will die and with it any safeguards to the individual, independent gasoline station operator.

We have in **section 114** stringent antitrust protections against collusion by the oil industry in dealing with energy emergencies. That will be taken out of there, if this is recommitted.

Section 115 deals with the problem of the export of needed fuel by providing for restrictions on such exports.

How many Members want to face their constituents and say, "Look, it is true that we did kill that provision and we are sorry, but we cannot do anything about it." That is what they are going to have to say.

Section 116 provides for unemployment assistance to those adversely affected by energy conservation measures. I am glad that the President now reportedly supports it, but they were up here lobbying against it when we had this measure in conference. My colleagues know that that is a fact. In fact, Mr. President, today I read in the Wall Street Journal that the Nixon administration has no intention of providing special unemployment assistance to workers unemployed by fuel shortages. Commenting on **section 116** of the Emergency Act, the Labor Department announced that it would pay unemployment benefits only to those narrowly interpreted as being directly affected by implementation of the act. The reason given for taking this narrow approach is that a broad unemployment assistance program would be—and I quote—"an administrative horror."

Mr. President, this is a most appalling statement. At a time when hundreds of thousands of people face the prospect of long-term unemployment, because of reduced fuel allocations or other shortages, it is incredible that an agency of the Federal Government whose mission it is to serve the working public should abandon these people because it shies away from a possibly difficult task.

When we considered **section 116** in the Senate, and later in conference, we recognized that major dislocations would occur in the economy

as the fuel shortage grew worse. Specific direction was given to the President, in administering this act, to take all possible steps to minimize adverse impacts on labor and employment. If this most recent announcement is any indication of the diligence with which this mandate will be carried out, we could well face a major recession. Once again, Mr. President, we find that Congress has taken the initiative in looking out for the public interest only to have its efforts frustrated by the administration. They have opposed this section of the bill since its inception, and, having failed at blocking its adoption, apparently now will refuse to implement its provisions.

Now we also propose to help the States to administer the programs. **Sections 122 and 123** authorize grants in aid and assistance to the State for coordinating energy conservation programs. We want these programs administered wherever possible by State and local governments. We do not want a huge Federal bureaucracy. We plan to reimburse the States for their efforts.

Section 124 provides mandatory disclosure of oil industry data on storage and stocks, production, reserves, distribution, and other essential matters. The need for full disclosure on energy has been brought out in hearings held here last week before the Permanent Subcommittee on Investigations. For the first time, the large companies are being called to be accountable to the public. But the executive branch cannot do a thing about it without this legislative authority.

Mr. NELSON. Mr. President, if the Senator will yield at that point, as to that provision in the bill, is it not correct that the distinguished Senator from Washington joined me in cosponsoring the Energy Information Act, which is a much more comprehensive bill than this one?

Mr. JACKSON. The Senator is correct. That would be permanent. That legislation would supersede this. But I point out to my friend from Wisconsin that this is an emergency act. Mr. Simon cannot now command submission of any information at all. It has to be voluntary. That is crucial. What is happening now is that the Permanent Committee on Investigations is turning over sworn testimony to the Federal Emergency Agency Administration so that they can analyze it.

I commend the Senator from Wisconsin. I have joined him as a cosponsor of that legislation but, in the meantime, what do they do? They do not have the authority they must have.

Then, I would point out, lest my colleagues forget, that section 129 deals with this arbitrary problem of price gouging.

Let me read that section in full so that every Member of this body will understand what he is doing if he votes to recommit this measure, because there is nothing that is driving the American people up the wall more than real and alleged price gouging.

Here is what **section 129** says:

> The President shall exercise his authority under the Economic Stabilization Act of 1970, as amended, and the Emergency Petroleum Allocation Act of 1973 to specify prices for sales of crude oil, residual fuel oil, or refined petroleum products in or imported into the United States which avoid windfall profits by sellers. For purposes of this section, windfall profits shall be defined as those profits which are excessive or unreasonable, taking into consideration normal profit levels.

There is no definition of it? There it is. Let us not go around kidding people by trying to make them believe that the bill may be unconstitutional. We applied elementary law regarding the question raised by the Senator from Wisconsin (Mr. Nelson) and the Senator from Louisiana (Mr. Long) as it relates to every section in the bill. That is the section on separability. That is standard legislative practice. If the renegotiation authority is declared to be unconstitutional, that does not bring the house down. We have gone through that routine.

Mr. MUSKIE. I listened earlier with great interest, I say to the Senator from Washington, to the discussion between the Senator from Wisconsin and the Senator from Louisiana. I make this point: This issue, as it was discussed in the conference report—the provision in the conference report—was in the House bill. Of all the provisions in the bill on which they insisted, this is one in which they took the strongest position.

There were those on the Senate side who were not sure that it was workable. We had some doubts about aspects of it. The discussion went on and approached a stalemate. How does one resolve an issue which is strongly supported by the one side, but as to which the other side has only doubt as to the validity of the provision?

So I offered an amendment, as the Senator will recall, making the provision effective January 1, 1975. The idea was that in later legislation there would be ample opportunity for the appropriate committee either to revise and improve the program in which the House believed, or offer something further, something better, or something different. We thought 1 year would provide adequate time.

So it puzzles me, in light of the discussion I heard earlier this afternoon—the commitment by the Senator from Wisconsin and the Senator from Louisiana—that, of course, there would be legislation by the committee which would be reported to the Senate and debated on the floor of the Senate.

What I could not quite figure out for myself was why it was easier to bring legislation of an original generic nature to the floor. Why do they not act to bring to the floor legislation that will supersede the provisions of the conference reports, if there really is a commitment to deal with the children?

I can understand why they were going to strike it here and bring it to the floor of the Senate in the form of new legislation, on which the Senate would have a chance to deliberate for whatever time the Senate wants, but the other route is just as viable.

The House insisted on this provision. They insisted on it. They rejected the bill the Senate sent over to them. I listened to that debate. If any Senator believes that the House conferees can be shaken, he is completely mistaken.

Mr. JACKSON. I could not agree more completely with the Senator. As a matter of fact, there were only 20 votes for the attempted compromise in the House of Representatives. They fought the omission renegotiation provision. So the Senate is now on notice that if this bill goes to conference, they are killing all the things we have recited in here, all the things that are in this conference report.

The Senator from Maine deserves great credit for working out the compromise so that it would not be effective until January 1, 1975,

giving Congress a whole year to deal with the problem of excessive profits.

We all want to be rational and reasonable about it. But what we have done here is to put a burr under the saddle of the House and Senate so that there will be some action on excessive profits and price gouging. That is the purpose of it.

Mr. MUSKIE. The Senator made reference earlier to the nature of the opposition to this conference report. I have listened to this debate all afternoon. Just one target has emerged and that is the windfall profits section. [Sec. 110.] That is the target of the opposition that has surfaced, has been discussed, and has been debated. The administration proposes recommittal, and I take it that this is the administration's principal target. Spokesmen who reflect the views of the oil industry have done so. So this is the one target.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. MUSKIE. I should like to finish, and then I will be happy to yield.

All we did, as Senate conferees, in the light of the adamant position the House took, was to make a commitment which we felt the Senate would be willing to make, a commitment that the issue of windfall profits would be dealt with this year. We made no commitment to this particular mechanism. We need no commitment to this particular provision, notwithstanding the enthusiasm of the House for it. We saw this as an opportunity to make a commitment to take action before January 1, 1975, and it is that commitment which we are being urged to abandon this afternoon.

Mr. JACKSON. Mr. President, this is the crucial question: Does it make any sense for this body to send the conference report back to conference, when we tried that course, in effect, by sending a bill to the House with this windfall profits section out and only got 20 votes for it?

We are on notice, every Member is on notice, that if we send it back, we are killing not just the question of renegotiation but also all the safeguards that deal with price gouging, unemployment insurance, a requirement on reporting, and all the other things that go with it, to protect the little dealer, to deal with antitrust.

Let us not kid ourselves. Why shed crocodile tears over all those increases that are on the graph? That is what it boils down to.

This issue was adjudicated in December, and the House turned it down cold. I must say that we are fooling ourselves when we move to recommit it.

There is no one in this body for whom I have a higher regard than the Senator from Wisconsin, but I am a little confused in this particular situation.

Mr. NELSON. I should like to say, with respect to the reference to the crocodile tears about the profits, that I am sure the Senator is familiar with my 10-year record here in support of removal of the depletion allowance and with the excess profits tax proposals.

Mr. JACKSON. The Senator and I have voted together on those issues. I voted to kill the foreign depletion allowance a long time ago when it was up. I voted against the special foreign tax credits. I voted to cut the depletion allowance, just as the Senator did. But what I do not

understand, really, is why there is this constitutional concern about this section when, if it is unconstitutional, the courts will decide it, and it will not touch the rest of the bill. This I do not understand.

Mr. NELSON. May I respond?

Mr. JACKSON. Yes.

Mr. NELSON. There are two points. I am concerned about two provisions. One is the environmental provision, which I realize was the best the Senator could get at that time. I object to the waiver of the standards for a 5-year period.

Mr. MUSKIE. I have been waiting all afternoon to get the specifics. I understand that the Senator objects to a 5-year waiver. There is no 5-year waiver of standards in this conference report.

Mr. MUSKIE. I would be glad to discuss that at further length; but I have been waiting, and all I have heard is a discussion of the windfall tax provision. That is why I addressed my remarks to it. I discussed the environmental provisions in the half hour prior to the offering of the motion to recommit, and I have been waiting for the case that I was told would be made on the floor. I shall be glad to get into it.

Mr. NELSON. I never got to the provision, because the distinguished chairman of the Committee on Finance started asking me questions, and we carried on a dialog so long that I never got to read all of my remarks on that subject.

Mr. MUSKIE. I got the distinct impression that the Senator's case against the environmental provisions was not as important, in his mind, as his case against the windfall profits provisions.

Mr. NELSON. I think there is no doubt at all that the renegotiation provision is simply an incredible disaster. I would not say that about the negotiated settlement that the distinguished Senator from Maine made in the conference.

Mr. MUSKIE. I would hope not. I would challenge that with all the vigor at my command.

Mr. NELSON. But what the Senator put into the bill and took out of his committee, with a vote of 14 to nothing, was a better provision than what we got from conference.

Mr. MUSKIE. I respectfully disagree with the Senator, so that the record is clear.

Mr. JACKSON. In fairness to the Senator from Maine, in its bill the House virtually disposed of the Clean Air Act, and the safeguards that we had in the Senate were retained in conference. We came out of conference with a much stronger bill, from an environmental point of view, than what the House had passed.

Mr. MUSKIE. There was no comparison.

Mr. NELSON. To what the House had passed—that is correct.

Mr. NELSON. I agree with the Senator from Washington when he says that this is a burr under the saddle, because the bill is such a disaster that Congress will have to do something about it.

We have a situation in which the President is going to set the prices at the retail, wholesale, and production levels. Then, after he sets the price and the retail operator charges the price the President sets, I can come in and complain against the price and I go up to the Renegotiation Board, and they say that under the guidelines it is an excess profit and that he has to give it back.

Mr. JACKSON. As I understand the Senator's point of view, he is raising questions we all raised in connection with renegotiation and the Clean Air Act. But does it make much sense to turn around and throw out an emergency bill with this long list of safeguards that protect the little dealer——

Mr. NELSON. The motion to recommit does not throw it out. If the Senator goes to conference and they cannot agree, he can come back with it.

Mr. JACKSON. The Senator from Wisconsin and I have been here a little while. The House has gone through this exercise once, and they gave us 20 votes on the issue of renegotiation.

Mr. NELSON. But that was last year, was it not?

Mr. JACKSON. Last year, but it is not that long ago. It was last month, in the closing days of the session, not a year ago.

Mr. NELSON. Is it not correct that at the time this agreement was negotiated, to which the Senator from Washington is opposed and voted against and to which the Senator from Maine is opposed and voted against, which I think both will say privately is no good—and not a single tax expert in America thus far, that anyone can name, supports the renegotiation proposal—is it not true that now there are hearings, which were not existent then, with respect to the excess profits tax?

I thank the Senator for the time.

Mr. JACKSON. We have been whipping around this renegotiation provision dealing with windfall profits. But if it did nothing else—and I hope my colleagues will listen to this—2 days after the conference agreed on the windfall profits section, the administration came out for a windfall profit tax bill. Do I need to say more?

Mr. LONG. The Senator certainly should say more. They told me about that a week before it came out.

Mr. JACKSON. The Senator has a better arrangement than I have.

Mr. LONG. The Senator ought to say more than that.

Mr. JACKSON. I know they got religion, Mr. President. I know they got religion when the conference agreed to **section 110** just as they got religion when the conference agreed on an unemployment insurance provision. The list of items is long on which they have switched their position.

They opposed the windfall tax provision; they opposed the unemployment insurance provision; they opposed the public disclosure provision; they opposed congressional review of their conservation plans; and now they are all for them. If that terrible renegotiation provision did not do anything else, it really brought religion down to the other end of Pennsylvania Avenue.

Mr. FANNIN. We should be fair. We had information about the excess profits tax before that conference was over.

Mr. JACKSON. When did they make it public?

Mr. FANNIN. I do not know when they told the Senator.

Mr. JACKSON. They did not tell me anything.

Mr. FANNIN. Let us disclose it. Let us be fair.

Mr. JACKSON. I want to be fair.

Mr. FANNIN. I have a letter from the President as to what he wants to do. He certainly is in support of what the Senator is talking about.

Sunday on "Face the Nation" the Senator from Washington said what should be done, but this conference report does not carry it through.

Mr. JACKSON. The press, which follows this matter closely, knows when they came out for the excess profits tax, after the conference agreed to this. They propose an excise tax for this purpose which would be passed on to the consumer, like a sales tax. I do not know how big a load the consumer can carry with the terrible escalation of prices now going on. We cannot afford many such new proposals that add to consumer costs, such as deregulating new oil. And I hope we do not have any more wheat deals for a while. We are now going to buy wheat from Russia and buy wheat from Canada. This is typical of this administration's mismanagement of the economy, for which we pay. A little more of this and we could be facing the greatest economic crisis since the 1930's.

Mr. RANDOLPH. The conference report at **section 301(2)(C)** requires the Administrator to conduct a study regarding further development of the Nation's hydroelectric power resources.

This directive is altogether wise. A million kilowatts of hydroelectric capacity operating at 40 percent plant factor saves consumption of 6 million barrels of crude oil annually, or the amount needed to generate equivalent energy by an oil-fueled powerplant. Today we have eight million kilowatts of authorized unconstructed Federal hydroelectric capacity. We also have proposals for 18 million kilowatts before the Federal Power Commission. My question to the gentleman is, will the study directed by the conference report consider further hydroelectric development by all interests of our Nation, both Federal and non-Federal?

Mr. JACKSON. My good friend correctly states that intent of this provision. The study will consider possible development of the Nation's hydroelectric resources by whomsoever it might be undertaken, toward the end of increasing the conservation of fossil fuels.

Mr. RANDOLPH. I thank the Senator.

Mr. JACKSON. I yield 10 minutes to the distinguished Senator from Maine. He and the Senator from West Virginia were the real anchor men in that conference we have heard so much about.

Mr. MUSKIE. Mr. President, I would be happy to answer any questions that any Member of the Senate would like to put to me about the environmental issue. I have not heard a case made against these provisions. I would be happy to go into it in a colloquy with any Senator. I already have placed a statement in the Record today explaining the conference agreement on these questions; and last month when we reported the conference report to the Senate I made a statement at that time explaining it.

I have heard the conference report on these questions distorted, misrepresented and misunderstood, so I am available, and I have been since 1:30 this afternoon to go into these questions, and I would be happy to do so.

Mr. NELSON. Did I understand the Senator correctly a moment ago to say that the conference agreement was better than the provision that the Senate adopted?

Mr. MUSKIE. That is right. I explained that earlier this afternoon.

Mr. NELSON. I did not hear the Senator's explanation. In reading it, I do not see how. The environmental organizations do not agree with that.

Mr. MUSKIE. The only environmental organization comments I have seen are from the Sierra Club. I see this two-page analysis with many errors in it. I have been waiting all afternoon for someone to advance these agruments so I could respond, but it has not been done.

There are errors, I am sure made in good faith. That is why I am here. That is my business. I was a member of the conference on these issues. I try to be knowledgeable about them, and accurate and objective about them.

The Senator, for example, referred to this as a 5-year suspension. The suspension of clean air standards is only until November 1 of this year. Thereafter, any fuel burning source which converts to coal before November 1, 1974, must file another compliance schedule which immediately puts them under standards of the act in a time frame compared to their implementation. There is no 5-year suspension. I heard that in some of these statements. To get into all the technicalities is a little bit of a problem. Let me read some of the language of the legislation which is enlightening. I wish to read **section 106** which is a definition of the extent to which standards can be modified under this bill. I read subsection (c):

SEC. 106. COAL CONVERSION AND ALLOCATION

(a) The Administrator shall, to the extent practicable and consistent with the objectives of this Act, by order, after balancing on a plant-by-plant basis the environmental effects of use of coal against the need to fulfill the purposes of this Act, prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this Act, has the capability and necessary plant equipment to burn coal.

So they must first have the capability present and necessary plant equipment to burn coal. If they do and if on a plant-by-plant basis a balancing of the environmental effects is positive—that is, the result is not harmful to the health—then the procedures we included in this conference report will take hold. This authority here that I have just read is effective only until May 15, 1975. At that point by the terms of this bill it expires. There can be no conversions after that date. With respect to conversions that take place before that date, they must be made, if they are made, on a permit basis. They must follow the procedures outlined in section 119.

I wish to read from the language in **section 119(b)(1):**

"(b)(1) Except as provided in paragraph (2) of this subsection, any fuel-burning stationary source (A) which is prohibited from using petroleum products or natural gas as fuel by reason of an order issued under section 106(a) of the Energy Emergency Act, or which the Administrator determines began conversion to the use of coal as fuel during the 90-day period ending on December 15, 1973, and (B) which converts to the use of coal as fuel, shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source.

Paragraph 1, which I have just read, shall apply to a source—

only if the Administrator finds that emissions from the source will not materially contribute to a significant risk to public health and if the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved, after notice to interested persons and opportunity for presentation

of views (including oral presentations of views). A plan submitted under the preceding sentence shall be approved only if it provides (i) reasonable assurance that such source will achieve at least the same degree of emission reduction by January 1, 1979, as it is required to achieve by the applicable implementation plan in effect on the date of enactment of this section; (ii) for compliance by the means specified in subparagraph (B) in accordance with a schedule for compliance which meets the requirements of such subparagraph; and (iii) that such source will comply with requirements which the Administrator shall prescribe to assure that emissions from such source will not materially contribute to a significant risk to public health. The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

(B) The Administrator shall by regulation prescribe requirements that source to which this subsection applies submit and obtain approval of schedules of compliance. Such regulations shall include requirements that such schedules shall include dates by which such source must (i) enter into contracts or other enforceable obligations for obtaining a long-term supply of coal or coal by-products (which contracts or obligations must have received prior approval of the Administrator), and (ii) take steps to obtain continuous emission reduction systems necessary to permit such coal or coal by-products to be burned in compliance with the applicable implementation plan (which steps and systems must have received prior approval of the Administrator). Such regulations shall also require that the source achieve as expeditiously as practicable considering the type of coal to be used (but not later than January 1, 1979) the same degree of emission reduction as it is required to achieve by the applicable implementation plan in effect on the date of enactment of this section.

It provides for the compliance, by the means specified in paragraph (B), in accordance with a schedule for compliance which meets the requirements of such paragraph.

Such source will comply with the requirements which the Administrator shall prescribe to assure that emissions from such source will not materially contribute to a significant risk to public health.

Now, paragraph (B):

The Administrator shall by regulation prescribe requirements that sources to which this subsection applies submit and obtain approval of schedules of compliance. Such regulations shall include requirements that such schedules shall include dates by which such source must (i) enter into contracts or other enforceable obligations for obtaining a long-term supply of coal or coal by-products (which contracts or obligations must have received prior approval of the Administrator), and (ii) take steps to obtain continuous emission reduction systems.

You know, Mr. President, the Sierra Club document which I hold contains this language:

Long-range expansion of coal-fired power capacity should involve development and installation of pollution control equipment and exploitation of low-suffer reserves. Such expansion will then involve no violations of air pollution standards, and so would require no special exemptions.

The language which I have just read writes into this law the exact provisions which they prescribe in their document. That is what I mean by a lack of understanding and knowledge of what is in this conference report.

Mr. MUSKIE. Mr. President, may I say this? The Senator from Wisconsin may wish to put other questions. While he is considering that, let me make this observation.

Anybody who reads the House record of debate on the original House bill, or who reads the House record on the bill which we sent over to the Senate on the last day, has to be aware of the strong and vigorous and rising opposition to every piece of environmental we have put on the books.

In the course of the debate on the House version of the original bill, the Representative from New Hampshire, Mr. Wyman, introduced an amendment to wipe-away all controls on automobile emissions—all of them—and he came within 20 or 30 votes of carrying that amendment.

During the recent recess. I—and I suspect many other Senators and many Members of the House—was asked to meet with automobile dealers across my State. Their mission was this: to pressure us or to persuade us to vote for the Wyman amendment.

Mr. President, if you open this thing up and send it back to conference, and perhaps back to the House, those of us who are really concerned about preserving the laws we have put on the books to preserve the environment had better consider whether we really want to open it up. Under the form of the motion to recommit the conference report, everything in the report is opened up. No agreement which we made in the original conference is binding upon anybody. So every provision we have in here—and those provisions touch not only stationary sources but automobiles and all of the rest of it—is open again and is subject to whatever consequences the pressures brought during the recess may achieve. To you who are really concerned about protecting as much as we can of the environmental policies we have written over so many difficult and frustrating and agonizing years and that are now on the law books of our community, I urge you not to open this compromise up to the kind of attacks it could receive if it got back to the House, by any stretch of the imagination. The people who are fighting the windfall profits tax, the oil industry also, would like to see every piece of environmental legislation go down the drain. That is not to say that a Senator who may vote to recommit, for any number of reasons, is motivated that way, but I think it ought to be made clear that the oil industry has been one of the strong proponents for undermining environmental laws.

Mr. Javits. Mr. President, I understand completely the arguments already made in respect of end-use rationing, allocation, new exploration, control of exports, unemployment assistance, franchise dealers, and so forth, and the disadvantages of the diminution of environmental protection, that brings the Senator from Wisconsin (Mr. Nelson) to bring this motion. Additionally, I have followed the arguments in respect of section 110, the renegotiation or windfall tax provision.

I think that renegotiation provision is bad. I believe it will be found invalid because of its indefiniteness. However, I believe it will be dealt with in an excess profits tax which we will be considering promptly, well before this provision takes effect. There is no liability until the Board actually acts. In other words, there is no right of action until the Renegotiation Board acts. So, nobody will be prejudiced by that section if it gets wiped out in an excess profits tax provision.

What this conference report means is that it is of importance in trying to get an end to the oil embargo. It is my considered judgment that unless we act by adopting the report—and I shall vote against recommittal and for the report for this principal reason—we will not have served notice upon the Arab States that the United States intends to make itself strong and well nigh invulnerable in terms of its

petroleum product consumption within very short order, and therefore that it is in an excellent position to lead, in respect of Western Europe and Japan, in an effort to coordinate their policies with ours, because it is the breakdown in that corrdination which has put the world in such a disarray as to endanger all mankind.

This to me is the critical point. It is that we are taking this action in order to demonstrate that the United States is not going to be overcome by this oil embargo or by production cutbacks, or what may turn out even worse, the enormously escalating prices of oil, but that we are putting ourselves in a stronger position to deal with it.

I believe, in view of the uncertainty and delay that are bound to ensue if this matter is returned to conference and if this conference report is not approved, the tradeoff for the imperfections that admittedly are in this bill simply are not worth it. And it is much too dangerous from the point of view of hoping to bring an end to the high prices which the world simply cannot bear as well as the actual physical deprivation caused by the shortage of oil which neither the people of the United States nor Europe and Japan can bear.

The key answer to that now is the stance of the United States. Can we take on the responsibility? In my judgment we can serve notice to the world that we can and we will by acting now in terms of giving ourselves the power inherent in this act.

For those reasons, and because I believe the deficiencies in the bill can be corrected by appropriate and swiftly enacted legislation, I shall vote against the recommittals of the conference report.

Mr. JACKSON. Mr. President, I thank the Senator from New York for his very fine statement.

Mr. President, I yield 2 minutes to the Senator from South Dakota.

Mr. MCGOVERN. Mr. President, the major oil companies and their friends in the administration have been pushing the line that present shortages of crude oil require higher consumer prices and sweeping new powers for the President.

There is no question in my mind that we face a long-term energy problem which must be met by expanded domestic petroleum production, the development of new fuels and sources of fuel and more rational consumption patterns.

But we must not permit this long-term question to obscure our judgment on whether the present alleged shortage warrants sweeping new Presidential powers and a full-scale retreat on emission standards.

I say alleged shortage because recent reports from Europe indicate a surplus of supply is causing the price of both crude and refined petroleum to fall. Ten days ago the Philadelphia Inquirer reported that European storage tanks were so full that tankers are backed up in the harbors because there is no room for their cargo.

Business Week in a follow-up article last week reported that European home fuel which cost $85 a ton before the October war and skyrocketed to $240 in the panic buying which ensued is now priced at $115 a ton and is falling. The article also notes:

> First to realize that a glut was developing were the major oil companies that were buying regularly in the spot market to buttress their own supplies. The majors stopped buying in mid-December.

Now we learn from the London Financial Times that the price for Arab crude oil is also falling by 25 percent or more from earlier sales.

Perhaps the reason for this is also that "the majors stopped buying in mid-December." Their embarrassment over high petroleum stocks would certainly provide them with a motive to artificially stop replenishing their stocks and keep on the pressure for high consumer prices.

This evidence leads me to conclude that the emergency energy bill should be sent back to the Interior Committee for greater study of how serious the present shortage of petroleum really is.

In this connection I have been rather dissatisfied with the administration's description of its information on the oil industry and congressional willingness to accept their plea of ignorance.

Under the phase IV price control program, the administration's own regulations require that the major oil companies file quarterly and monthly reports on "prices, costs, profits, and production levels," as well as detailed justifications for proposed price increases—sections 150.151, 150.362. They also have the power to audit company books to verify those reports as well as to expand the reporting requirements.

So, in the face of that authority, the administration's plea of ignorance of oil industry information sounds suspicious. Either they have the information and are not properly using it or they are not asking for sufficient information in their price control program. The problem is certainly not the absence of authority to get the facts. I hope this is a subject the Interior Committee will pursue in reconsidering the bill.

Lastly, I believe that the excess profits provision contained in the bill is inherently unworkable. Arbitrary judgments made by faceless bureaucrats without strict standards to follow never work out well. That is not to say that a good excess profits tax cannot be drafted. It only means that the present language is not satisfactory.

I introduced the first Senate excess profits bill last December and will shortly introduce a revised version. Other Senators will doubtless offer other proposals. Even the administration has an excise tax proposal mislabeled a "windfall profits tax." We must act to control runaway prices and profits promptly. But we should do it right.

Mr. JACKSON. Mr. President, the Senator asks some very proper questions. The Subcommittee on Permanent Investigations had seven of the largest companies before it. They testified under oath. We asked them questions about the stocks on hand.

The committee had Mr. Simon before it and proceeded on the same basis. The testimony of those witnesses was to the effect that for the first quarter the supplies of middistillates was down and the supply of gasoline was up a bit. In part that was due, we think, to the weather that was most favorable in recent weeks and which caused the stocks to be up more than they were a year ago.

First, the gasoline stocks, however, are going down very fast. So, we are facing a very critical situation in the second quarter of this year barring some kind of solution in the Mideast. It is the judgment of a lot of people who are following this problem that gasoline rationing will take effect. The answer is that stocks are up a slight bit over a year ago, due primarily to weather conditions. But gasoline is going down.

Gasoline was up at one point. However, the testimony was that inventories are going down.

I do not know what the situation is overseas. We have asked these companies the questions under oath. We shall have follow-up inter-

rogatories to get to the particular points that the Senator has in mind and to determine whether there are inventories anyplace else. They have sworn under oath that they do not have anything other than that which they have revealed.

Mr. McGOVERN. There are publicly released figures that show at least a modest increase in oil company reserves now over a year ago.

Mr. JACKSON. The Senator is correct. However, when we break it down, it is in the middistillate area. Gasoline is going down, because they are still refining heating oil. We have benefited from the weather. Because of the weather we may be faced with having a glut of heating oil.

Mr. McGOVERN. I know that the Senator from Washington has been very vigorous in his interrogation of these companies. I do not need to remind the Senator that these are the same companies that told us 3 or 4 years ago that there was not any shortage and that we did not need to lift the import quotas. I wanted to remind the Senator that their judgment and facts are not always right.

Mr. JACKSON. The Senator is correct.

I wrote a letter to Secretary Schultz in 1969 denouncing the archaic quotas set on oil.

The problem is a difficult one which we are following up in the committee. The staff met with the representatives on yesterday. We are asking all of the questions the Senator referred to as a followup, so that we can find out specifically what happened.

Mr. McGOVERN. Mr. President, I commend the Senator from Washington for his action.

Mr. JACKSON. I commend the Senator from South Dakota for raising questions on the floor of the Senate.

Mr. President, I wonder if the Senator from Wisconsin would take a little time now. I believe that the Senator has more time than we do.

Mr. LONG. Mr. President, I have yet to hear anyone refer to the fact that this measure is unconstitutional. We have the testimony of tax lawyer after tax lawyer, many of whom have served as Commissioners of Internal Revenue Service under the Truman administration, the Johnson administration, the Kennedy administration, and the Nixon administration, who say that they think the proposal is unconstitutional.

If that proposal is unconstitutional, it may well bring down the whole bill with it. So the whole bill may be declared unconstitutional. It is very simple. This constitutes a taking without due process. It says that if someone takes what we believe to be an unfair profit, we might look at all of his profits and tell the man to give back anything that he has received that is more than a fair profit.

Now the Renegotiation Act is able to bypass that issue because there is a contract between the Government and the Government contractor to give the money back.

I know a very able lawyer in New York who said that he thinks that provision is bad. I think that we can repeal it later and substitute something else.

Here is what the witnesses say. If a company produces more oil than it had in the base period, he has to give back 100 percent of everything that he has made or he is guilty of price gouging.

Mr. President, the people will say, "You will not accuse me of price gouging. I will not produce that much oil."

Look at the list of all the companies up there on the board. They made more profits than they made in a depressed period. We should not be giving them an incentive to produce less oil than they did before so that they will not be accused of price gouging. That is ridiculous.

We ought to be encouraging people to produce more energy.

When we put that provision on the statute books, lawyer after lawyer who has had responsibility in this matter has said that people will be confronted with uncertainty and that, if they invest their money, they cannot get it back. Bankers will not make loans to companies that want to produce more oil.

Mr. President, bankers will not make loans to companies who want to drill wells and produce more oil and process more oil. They will say that it is doubtful whether the company will be permitted to earn enough money to pay off the loan.

So, we would get less oil and less gas in due course if we were to follow this method. Why would we want to do that if we could take our time and pass a law that would be constitutional? We would then be doing what we swore to do when we took our oath to office, to uphold the Constitution.

Mr. BENTSEN. Mr. President, is it not true that there are approximately 220,000 service stations in this country, that 70 to 80 percent of those stations are independent operators, that there would be individual decisions with respect to each of them with respect to the sale of gasoline, that any citizen might object to any one of those stations and a hearing would have to be held, and that would result in a legislative nightmare. There is no way in which that could feasibly be accomplished.

Mr. LONG. And every one of those 220,000 service stations can be hauled into court under the Renegotiation Board for every sale they make to every customer. So that board could meet from now to eternity, and would not have settled all its cases.

Mr. BENTSEN. Does the Senator from Louisiana remember the service station operators who were here last year because they were having problems in this regard?

Mr. LONG. I certainly do.

Mr. BENTSEN. Does he not think they would be back again with the same kind of problems?

Mr. LONG. I certainly do. Mr. President, I expect to vote for the kind of excess profits tax that would work, and would not keep us from getting energy for the American people at a time when they need it desperately.

Mr. NELSON. Mr. President, what we are really doing if we approve this bill is playing a gigantic con game on the American public, because it is not constitutional, it will not work, and it is not a tax, and I do not think the President, on his worst day, could conceivably sign this bill.

Nevertheless, I think we ought to recognize who we are putting a burden on with this bill. That is, the local gasoline station owners and it will bankrupt them. They cannot live under it.

Think of a situation where the President sets the price at the retail level, and then the filling station operator follows the price the President sets. Then along come a bunch of customers and complain that the price he charged, based upon what the President set, gives him an excess profit, so they go up to the Renegotiation Board, which has the authority under the law to decide that in fact, after using all these guidelines I read into the Record, he is charging an excess amount. So then they haul him before the Renegotiation Board, with maybe 10 complaints or 50 complaints, and now he has got to pay back money.

There is no way in the world, under the free enterprise system, for any retailer to survive under this provision. The Senator from Washington and the Senator from Maine both know it is a bad provision. They will both say so. They both voted against it. Yet they want to stick by the provision because they say that is all they can get out of the conference.

Now let us look at the argument that there are a bunch of urgent things in here. I just called Wilbur Mills and talked with him at home, and I asked him about whether, if something happened at this conference and they did not come back with any agreement, he considered it important that we have some unemployment compensation act provision such as is in this bill, or better.

He said, "Yes, we have got to do something about those who are unemployed."

So we have the chairman of the Ways and Means Committee who has a position on it, we have the chairman of the Finance Committee, and there is hardly a soul in either House who will vote against extending unemployment compensation at least as broad if not broader than what is in this bill.

It is argued that we need a Federal Energy Office. An FEO is contained in this bill. I must say to the distinguished Senator from Washington that after he conducted hearings he came up with a far superior Federal Energy Office Act (S. 2776) and we passed it here in the Senate. So that is no problem.

Now, as to the question of rationing: I do not think the problem needs to be delineated further. However, the President can ration, under the Defense Production Act or under the Economic Stabilization Act, right now.

Of the question of disclosure, we have the Energy Information Act, which the distinguished Senator from Washington has cosponsored with me, and it is far superior and much more comprehensive than what is in this bill. Hearings are going to start and we are going to complete them before the end of the recess, and they will be before the Senate within a matter of 15 or 20 days.

There are at least four good provisions in there that are not controversial; without this bill we can pass them any time we want to, and we will. One of them is the antitrust provisions. They have already been enacted on the floor of the Senate. We can pass those. There are the export limitations; everyone agrees on them. We can pass them. There is a franchise protection provision; almost everyone agrees on that, and we will pass that, plus one on price gouging.

So I do not see the reason for all the fuss.

I shall vote against recommitting the conference report. I was a conferee on this measure in the closing days of the last session. I re-

member the long and arduous hours we spent in that conference—on one occasion, at least, with the administration representatives in the adjoining room—trying to hammer out some kind of compromise to give the President the powers he urgently needs to deal with the energy crisis.

Many provisions were adopted in that conference report with which I disagreed, and with which I still disagree, Mr. President, particularly that section which deals with renegotiation. That section is poorly drafted.

But the fact that it is bad, it seems to me, is an urgent incentive for the jurisdictional committees, the Finance Committee and the Ways and Means Committee, to go forward with corrective legislation to prevent the major oil companies from reaping windfall profits as a result of the fuel shortage.

The one thing I fear, as senior Republican member of the Public Works Committee, which has jurisdiction of the environmental aspects of this bill, is that if we go back to conference we will come back with a bill not as good, and in fact maybe much worse, than that which we hammered out so laboriously in the course of that conference. We did a good job, and I do not want to take a chance on its going down the tube. Therefore, I shall vote against recommittal.

Mr. Jackson. Mr. President, the purpose of S. 2589 is to assure continuation of vital services during continuing energy shortages. It is the purpose of this measure to equitably distribute the burden of energy shortages and minimize, insofar as practicable, the adverse impacts of the energy emergency in all sectors of society.

There has been much discussion of what constitutes a vital public service. I would like to make clear, at this point, that continuance of education would indeed be considered a vital public service, and that continuation of their operations are essential.

I have received a letter from the president of the National Education Association describing a number of ways in which schools can contribute to energy conservation, and requesting equitable consideration of educational facilities under proposed allocation and conservation programs. I commend such spirit, and ask unanimous consent that portions of that letter be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record as follows:

Those of us who work in the schools know very well that a part of the heat in the school room is body heat from the tremendous energy resources of the young people. Furthermore, the pupil in the classroom may actually use less scarce energy than the child in a heated home with the color TV or stereo blaring or the teenager cruising around aimlessly in a car. We question the premise that closing schools will result in a significant net saving of energy.

Some of the means being considered with regard to school's efforts to conserve energy are obviously less disruptive than others.

Closing for an extended period is probably the most disruptive measure for the pupils, parents, and teachers. Learning progress would be impaired if the school term were interrupted for an extended period. Working parents have to provide daytime supervision for pupils. Summer work, school, and vacation plans of teachers, pupils, and parents would be interrupted. Wages of school employees on daily or hourly rates would be lost, and teachers' contract salaries would be in question.

The four-day week would necessitate rescheduling of classes. Pupils and teachers would have to adjust to a longer school day. Some employees on a daily or hourly wage basis would earn less money.

Shortening the hours schools are open during the day would curtail extra-curricular activities, supervised study in school, and alter regular school adult and community programs.

Closing schools when the temperature is extremely low would be of some inconveniences to pupils, parents, and school employees. The severity of the damage would depend on the number of days schools were closed. In cold climates this would be extremely disruptive.

Fuller utilization of existing transportation facilities and lowering of school temperatures within limits of health and safety would obviously be the least disruptive of the options available.

Again, let me emphasize that we are not asking that schools be totally exempted from the constraints necessitated by the energy crisis. Obviously, we realize that all of us are going to have to tighten our belts and put up with inconveniences. But we are asking that the Congress and the Administration recognize the unique qualities and functions of the schools and the need for schools to operate at a near-normal level. We are ready to cooperate in whatever way possible to insure both short-range and long-range benefits to all of society, which must include the integrity of the education process.

Mr. Clark. Mr. President, it is past time for the Congress to respond fully to the Nation's energy shortages. In the midst of the raging controversy over the role of the oil companies and confusion about the severity of the shortage, Congress has not been able to agree on positive action. I support the Energy Emergency Act—despite its faults—because it deals with several important problems that need attention.

The legislation is far from perfect. But it at least attempts to deal with the giant oil companies that have made such high profits while the Nation has been running short of fuel.

The conference report provides for a windfall profits tax. **[Sec. 110.]** Although I would prefer a stronger provision—and, hopefully, one soon will be enacted—the conference report is at least a step in the right direction. Additionally, I would hope that we will soon move to decrease or eliminate the oil depletion allowance, the tax loophole that permits oil companies to pay only a few percent of their profits in income tax.

However, an increased tax on oil company profits is only part of the solution to the problem caused by high oil prices. We must also provide relief for the consumer who has paid and is paying the higher prices. A bill introduced by Senator Mondale, S. 2906, does this, providing tax relief for those who need it most—those families earning less than $20,000 per year. Ninety percent of the tax relief provided by this bill will go to those with incomes below $15,000.

Together, the windfall profits tax, a lower depletion allowance and S. 2906 will do much to remedy the redistribution of income caused by the high price of oil.

One of the most important provisions of the Energy Emergency Act requires the oil industry to provide information necessary to compile an adequate assessment of the energy situation. **[Sec. 124.]** Perhaps the most serious obstacle to meeting the energy problem has been the lack of adequate and reliable information. I would prefer an energy information agency independent of the Federal Energy Administration, an agency provided for in the Nelson-Jackson bill, but it is essential right now that we have the facts about energy—and that they are available on a regular basis.

The Energy Emergency Act contains a number of other worthwhile and necessary provisions:

It gives the President the authority to ration—which may be necessary this spring as the impact of gasoline shortages are felt.

It provides very clearly for unemployment compensation to people who lose their jobs because of the energy shortages.

And it gives the President the authority, under congressional review, to impose energy conservation measures—such as a ban on Sunday driving, closing of gasoline stations, and setting store hours.

Although I support the overall direction of this bill, I am disappointed and disturbed with the sections that affect the environment.

While I would greatly prefer that automobile emissions standards proceed as required by the Clean Air Act, I can accept the extension through 1976 because the 1975 standards, which will require the extensive use of catalytic converters—devices which increase gasoline mileage—will proceed on schedule. [Sec. 203.]

I am far more concerned about the section on emissions from utilities and large industries. [Sec. 119 CAA.] The Environmental Protection Agency has already granted variances to permit the burning of coal this winter. This action does seem reasonable under the present conditions. But the extension of deadlines for meeting the standards until 1979 goes far beyond the demands of the energy crisis. Fortunately, Senator Muskie who has led the fight for clean air in the Senate has indicated it is unlikely that more than half of the 46 plants that qualify for the extensions will convert to coal. Those that do convert must have "cleanup equipment" by the end of 1978.

Another provision of the conference, which I do not support, would prohibit the use of a parking surcharge—a device which would encourage mass transit, and thus help in meeting energy shortages. [Sec. 202(b)(2)(B).]

I am concerned about these provisions because I do not believe that environmental protection caused the energy emergency and it certainly should not be sacrificed to the energy emergency. We have limited supplies of energy—but we also have limited supplies of air and land and water.

It appears, however, that many Members of the Congress are determined to retreat even farther from clean air goals. From all indications, the provisions of the conference report represent the best possible compromise, considering the strength of the pressure to back off from the goals.

In spite of my doubts about some of its provisions, I support this bill because it begins to face the problems surrounding the shortages—oil company profits, the lack of vital information about energy, and the need to conserve energy.

Mr. Mondale. Mr. President, I will support the motion of the distinguished Senator from Wisconsin (Mr. Nelson) to recommit S. 2589, the National Energy Emergency Act of 1973.

This is a complex piece of legislation, with many provisions affecting a wide spectrum of interests. In some instances, these provisions may have been felt necessary at the time this legislation was in committee and originally on the floor of the Senate. Since then, however, 2 months have passed. Now, we are more perplexed than ever as to the extent of the current crisis, and what types of legislative authority are really necessary to enable the President and the Congress to deal with the crisis.

We all want the President to have the tools he needs to deal with the present shortage situation. In particular, we all want our economy to remain strong and jobs to be given the top priority in decisions affecting the use of scarce oil resources.

But we must be careful not to grant more authority than is needed, and thereby to abdicate our own role in dealing with this crisis. And we must be certain that the type of authority we grant—be it in the area of mandatory conservation measures or measures affecting our economy or environment—responds to the present situation and not to our worst fears about the potential shortages at some earlier date.

Much of the controversy over this bill, however, does not center on rationing or environmental concerns or export controls.

Instead, it centers over the performance of the largest single industry in this country—the oil industry—in recent months, and whether the profit performance of that industry indicates that windfall profits have been and are being realized.

In my view, there is little question that the recent profit increases reported by the major oil companies of this country indicate that they are profiting immensely from a shortage situation. Regardless of the extent of the industry's role in helping to create the shortage situation, it is clear that they and they alone are now reaping its benefits.

But I strongly believe that the real issue has been and will continue to be distorted, so long as we concentrate our attention on windfall profits. The real issue is not windfall profits. The gut issue which affects every American working family is the incredible increases in the price of crude oil and petroleum products to which we have been subjected in recent months.

In fact, I believe that the longer we focus on the issue of windfall profits, and the longer we attempt to devise a windfall profits tax which the oil companies cannot avoid or evade, the longer we will be prolonging the agony of the American consumer. Americans are being slowly bled to death by rising prices, and rising oil prices are the most dramatic and most important source of this cruel inflation.

The real issue, I repeat, is price. I therefore believe that we should focus attention as quickly as we possibly can to legislation which attacks the real problem of price.

I have introduced legislation which seeks to deal with this problem by requiring the President to institute an immediate freeze on all domestically produced petroleum and petroleum products, and within 30 days thereafter, to roll back the prices on such crude and products to the levels prevailing on November 1, 1973.

This rollback would save the American consumer $6 billion per year on the crude oil level alone, with additional billions of savings on refined petroleum products. And once extortionate price increases have been controlled and rolled back, there will be little in the way of excess profits with which we must deal.

It makes little sense to force American consumers to pay embargo-induced prices for domestically produced oil, and then to attempt to collect some of the windfall. Instead, it is possible to lower prices and save consumers billions of dollars per year. A rollback of the type I have proposed would eliminate the vast majority of the Arab embargo-induced increases in domestic oil prices, while still maintaining the

strong incentives for increased domestic exploration and production which we all want.

Of course, we may still wish to enact excess-profits legislation, to deal with those increases which any price rollback cannot absorb. But at this point we must continue to focus public attention on the central issue of price.

I, therefore, believe that the excess profits provision in this bill—which is quite clearly unadministrable—should not be used as the justification for an otherwise problematical piece of legislation.

On balance, this legislation might gain much from recommittal. Hopefully, many of the problems now in the bill could be resolved in a satisfactory manner. Then, we might again consider this legislation in a way which will insure that in dealing with the present energy situation, we tailor the solution to the problem with creating more questions than we resolve.

Mr. Bayh. Mr. President, I have determined to oppose the motion to recommit this conference report, and, assuming that motion is defeated, to vote for final passage of the Emergency Energy Act.

As with any other multifaceted legislation, this is not a simple matter with all the evidence for or against the conference report. But on balance, although I do have reservations regarding certain provisions of the conference report, I am convinced that the national interest will best be served by passing this bill at this time.

American consumers are justifiably up in arms over the huge profits increases being realized by most of the major, integrated oil companies in the midst of our energy shortage. There should be little wonder that consumers are upset: the 20 percent rise in gasoline and 45 percent rise in fuel oil prices last year were only partly a result of worldwide increases in oil prices. The fact is that domestic crude oil prices rose sharply last year and contributed significantly to the jump in consumer prices for refined petroleum products.

Profiteering, Mr. President, is no more tolerable in the midst of the energy crisis than it would be in the midst of a war. And we have a heavy responsibility to prevent profiteering by the major oil companies, along with a parallel responsibility to keep the lid on consumer prices so that inflation does not go unchecked.

The provision of this bill—section 110—dealing with the problem of windfall profits and price gouging gives us our first opportunity to enact legislation protecting the consumer from unreasonable fuel prices and making certain the oil companies do not further exploit the fuel shortage.

The specifics of section 110 are not ideal by any means. I share the hope expressed by a number of my colleagues that this section, if enacted, will be replaced by an even better and more workable excess profits tax with or without some control on domestic oil prices. But I am deeply concerned that if we fail to pass this bill it may be along time before the desired excess profits tax is forthcoming from the House of Representatives where it must originate.

So the need to enact the prohibition on windfall profits strikes me as a decided plus in favor of passage of the conference report.

The bill has a number of other important provisions which argue for its passage:

Recognizing that there are limits to which we can balance energy supply and demand by increasing supplies in the short term, the bill gives the administration needed authority to limit energy demand through mandatory conservation methods. Such conservation may be our best hope for avoiding economic disaster due to the energy crisis.

In a further effort to avoid energy waste, the bill instructs the regulatory agencies to revise their regulations to permit fuel savings in interstate commerce.

Since end-use gasoline rationing may become necessary if the Arab oil embargo is effective and sustained, the bill creates the necessary authority for rationing.

Recognizing the pressing nature of the petroleum and natural gas shortages, the bill wisely directs that coal be used in lieu of oil or gas where it can be accomplished efficiently without endangering the public health. Air quality rules are to be suspended when necessary to permit the use of coal. [Sec. 106.]

As part of the overall program of energy conservation the bill provides Federal assistance to States and localities in developing carpool programs. [Sec. 117.]

Since the major, integrated oil companies have used the fuel shortage as a tool against gasoline service station operators who do not follow the company line, the bill contains needed protections for the franchise rights of these small businessmen. [Sec. 111.]

The bill has tough, effective antitrust rules to make certain the oil companies do not act improperly in concert in responding to the energy crisis. [Sec. 114.]

Very importantly, the bill authorizes $500 million in extended unemployment compensation for workers who lose their jobs as a result of action taken on the authority contained in this act. I saved this point for last, Mr. President, because I think it is an important step forward, but a step which requires amending at the first available opportunity. [Sec. 116.]

My concern is that the way the amendment is drawn it will limit extended unemployment benefits in a manner which was not the intent of Congress. As the Senate knows, the energy crisis has already had a severe effect on the economy in various parts of the country.

Only this morning I was in Elkhart, which a few months ago was a thriving city, in large part because it was the center of the Nation's recreational vehicle industry. Today, as a result of the energy crisis and the public's uncertainty about the availability of gasoline, the recreational vehicle business is severely depressed and Elkhart's unemployment rate is about 10 percent.

Yet the unemployed workers and their families in Elkhart are not technically covered by the extended unemployment compensation provisions of the pending legislation since these jobs were lost prior to enactment of the Emergency Energy Act. Had this bill passed before the Christmas recess in its present form, when it was blocked by a filibuster against the windfall profits section, most of the unemployed people in Elkhart would have come under the coverage in section 116.

In addition, I have been informed that the Labor Department is giving a very narrow interpretation to that provision of section 116 which extends the benefits of that section to persons who lose their

jobs because of this act. This narrow interpretation of who qualifies for extended unemployment benefits is directly contrary to the goal of this bill as I see it.

To remedy the inadequacy of **section 116** that results from the long delay in enactment of this bill, and to deny the Labor Department the chance to give an unduly narrow interpretation to **section 116**, it is my intention to introduce a new bill amending this section of the Emergency Energy Act in the very near future. This bill, which I hope could receive prompt attention, would make certain that the extended unemployment benefits were available to all workers who lose their jobs due to energy crisis and would be retroactive to last fall so persons now unemployed are covered.

I indicated at the outset, Mr. President, that there were sections of this bill about which I had reservations. One was the unemployment compensation section, which should be corrected easily through a separate piece of legislation.

Another part of the bill which causes me concern is that which goes farther than necessary in pushing clean air standards back to 1979. As I said before, I support the separate section [Sec. 106] of the bill which directs that coal be used in lieu of oil or gas when possible during the energy emergency. Such action may well be necessary for more than 1 year, but there simply is no evidence to justify a decision now to push the air quality rules back to 1979. [Sec. 119 CAA.]

This problem should be approached on a reasoned basis, responding to real energy need, making case-by-case decisions as necessary. This is far more responsible than making a wholesale retreat from the environmental gains of recent years. While I recognize as much as anyone the importance of assuring an adequate energy supply, a broad abandonment of the Clean Air Act goes beyond the current energy need. It is clearly an attempt by some to undo much of the progress previously made in setting forth the goal of clean air for all Americans.

Mr. President, while this provision of the bill certainly appears to be broader than necessary in the context of the energy emergency, the Conference Report should be adopted because of the overriding national interest embodied in its other provisions. I trust that if the Conference Report is adopted that the Air and Water Pollution Subcommittee will not let the issue rest and will come forward with remedial legislation undoing the damage to the Clean Air Act that is in the conference report.

With such remedial legislation, a clarification of the scope of extended unemployment benefits, and the excess profits tax which I believe this bill will elicit, even these three parts of this bill which have provoked so much discussion would be resolved positively.

I hope, Mr. President, that the Emergency Energy Act will pass the Senate today, the House later this week, and become law within days. It will represent a significant gain in our national energy program, and permit us to move in those areas outlined just above, as well as taking other necessary steps to provide Americans with enough energy at affordable prices. That, after all, its the overriding goal of any national energy program.

Mr. PERCY. Mr. President, on November 20, 1973, on the floor of the Senate I expressed serious reservations about the original version of

S. 2589, the National Energy Emergency Act, which was rushed through the Senate in near-record time. At that time I stated:

> I am concerned that S. 2589 represents another massive grant of authority to the President for instituting Federal controls, which the Congress and the public may regret for years to come.

More than 2 months have now passed since that hasty action by the Senate. The Federal Energy Office has been reasonably effective in coping with the fuel shortage, relying only on the Emergency Petroleum Allocation Act and on voluntary conservation measures. Now, even the chief sponsor of the bill, the distinguished chairman of the Interior Committee, has been quoted as questioning the need for legislation granting such unprecedented broad authority to ration fuels and mandate energy conservation measures.

Except for **section 104**, which allows the President to impose mandatory gasoline rationing without any congressional oversight, I believe the conference report on S. 2589 is generally preferable to the Senate-passed bill in its handling of the emergency powers. Nevertheless, I intend to vote to recommit the bill to conference in the hopes that other extraneous provisions, many of them added by the House, will be eliminated from the bill.

I object to **section 103** which haphazardly sets up a Federal Energy Emergency Administration with no clearly defined functions of staff. A far superior bill to establish the FEEA, S. 2776, has already passed the Senate and a similar bill has been reported in the House.

I object to **section 201**, which permits powerplants that are ordered to burn coal instead of oil or gas, to continue burning coal for 5 years without adequate regard for air quality standards. This is too long a period of time for temporary relief. I believe the coal conversion and auto emission provisions of the conference report go too far in turning back the environmental clock for the sake of an energy emergency whose true extent is still very much in doubt.

Finally, I believe the purported "prohibition" on windfall profits in **section 110** and the additional unemployment assistance program in **section 116** are inequitable and unworkable in practice. I have proposed that appropriations be increased for the public employment program as a method of providing jobs, not handouts, for the energy-related unemployed.

For these and other reasons, I believe the conference report should be completely reworked in light of the better understanding we now have of the fuel shortage situation. This is extremely important legislation, which could have profound effects on our economy and our lifestyles. It deserves more careful deliberation, and I shall vote to recommit it to conference.

Mr. HASKELL. Mr. President, a great deal of attention has been paid in the press and recently in the Congress to the enormous profile that major oil producers have been realizing since the energy problem became an energy crisis. The Congress has made an effort to address the problem in **section 110** of the Energy Emergency Act. The matter continues, though, to be one of great concern to me because I am afraid that the Emergency Act fails to provide a solution, and, indeed, may in some cases do injustice to some of the small businessmen involved in oil production and sales.

As a general proposition, Mr. President, I agree that it is our duty to take a close and hard look at the profits being realized by the oil industry at a time when virtually all Americans must suffer in one way or another from the energy crisis. In times of crisis, the American people are brave and cooperative, but they are also accustomed to the principle that the burden of a crisis is to be shouldered equally by all. While everyone else in America must cope with a soaring rate of inflation, as well as the problems attendant to the energy crisis, there is something improper in a clearly unreasonable level of profiteering from these troubles by a single industry. The issue of windfall gains prompts us to consider the ways in which the good fortunes of the oil industry can be turned to the benefit of the country as a whole. We should be able to formulate a mechanism to return excess profits to consumers.

I see the task before us as one involving a number of distinct, but interrelated concerns: Alleviation of the energy crisis, assurance that the suffering of the Nation is not the unfair good fortune of a small few, and adjustment of some of the tax inequities that have been made even more apparent than they were before the energy crisis began. With these considerations in mind, I have carefully considered the legislation pending before us and I find it inadequate in some respects. Recognizing as I do that it would be unwise at this time to move for recommittal of the conference report, I do want to register my reasons for giving only qualified support to this report, and to propose what I believe to be an appropriate solution to the problems raised by the bill and which I am certain will demand our attention in the coming months.

In the year just past, the 21 major oil companies earned more profits than any other segment of the economy. Profits rose 61 percent last year over the year before, and may well increase another 60 percent in the year to come. At the same time, the oil industry was the recipient of bigger and better tax breaks than any other industrial sector, and of course, than the average American family. These tax breaks—the oil depletion allowance, the tax credit for so-called income taxes paid to foreign governments, and the writeoff allowed for intangible drilling costs—constitute indirect subsidies that, in part, are what is known as the "hidden budget" of the Federal Government, escaping as they do the continuous or at least periodic reevaluation that we conduct in the case of a direct Government subsidy. Thus we are today faced with a situation in which the American people must pay higher and higher prices for petroleum products, while the industry brings in more and more profits, in large part thanks to literally billions of dollars of Government subsidization through tax breaks that the industry has received in the years past. This is the situation with which the Energy Emergency Act fails to come to grips—more particularly, which **section 110** of the act inadequately addresses.

Section 110 directs the President to exercise the price control authority delegated to him several times in the past. Additionally, it directs him to set price ceilings on petroleum products by reference to a specific definition of "windfall profits" and gives authority to the Renegotiation Board to determine by rule or order whether prices charged by the industry are leading to windfall profits. In the event

that there are windfall profits the Board has a wide range of powers to rectify "gouging," including the power to order a refund of the excess profit. On its face, the provision makes sense. In reality, it is unworkable and will lead to a double injustice. On the one hand, **section 110** fails to address the fact that multinational oil industries are capable of finding many pockets in which to hide excess profits from the tax collector. The same profits will be hidden from the Renegotiation Board. On the other hand, the act applies indiscriminately to the petroleum industry; to Gulf and Exxon, to the one-well independent oil producer, to the corner gas station. Thus, the reality is that the biggest and most profitable of the oil companies, the multinationals, will likely escape the sanctions that may be imposed under **section 110**, while small independents or the single station owners will be subject to the act since they have nowhere to hide their "excess" profits. Furthermore, it is the independent that is the source of exploration in the industry.

The excess profits of the truly domestic segments of the oil industry can be controlled very easily through a meaningful program of price control—controls that do not exempt new oil or stripper wells. We could avoid the administrative nightmares that **section 110** is likely to give the understaffed Renegotiation Board through a serious and comprehensive effort to control prices. Refunds would not be necessary for the simple reason that the prices would not be excessive. By a meaningful price control effort, I mean a rollback of the prices currently being paid for both new and old oil. New oil, exempted from price controls at this time, is bringing $10 a barrel, while the increases that have been allowed by the Cost of Living Council to old oil have pushed its cost from about $3.90 a barrel last year to at least $5.25 a barrel today, a 35 percent increase. An important consideration, of course, is the effect of such a rollback on the future of energy exploration. I am confident that an appropriate balance between price protection to the public and a continued incentive to exploration can be achieved. Only last October 24, when the price of old crude oil was $4.25 a barrel and the price of new crude was about $5.50, the chairman of the Standard Oil Co. of Indiana, stated that:

> Recent increases in the prices of domestic crude oil and natural gas have provided additional incentives and additional funds for intensified exploration for new supplies of oil and gas.

And, the Petroleum Independent, the magazine published by the Independent Petroleum Association, in its November 1973 issue reported this comment by a producer-geologist:

> There's no doubt that prospects are for increased drilling. . . . With new oil prices from $5.30 to $6 a barrel, there's incentive now to go looking for oil.

What these statements indicate is that long before—very long before—the price of new crude reached $10 a barrel, sufficient incentive existed to explore new sources. Clearly, there is room for a rollback.

What price controls in general, and **section 110** of the legislation before us cannot do is to effectively control the prices of oil that moves through the hands of the multinational corporations. The processes through which these corporations hide their profits, or turn them into "costs," take many forms. For example, the multinationals commonly own the transportation systems that move their oil. A shipping

subsidiary might fly a foreign flag for the purpose of taking advantage of that nation's absence of an income tax. Or, a multinational might own foreign producers such as the Aramco Corporation, whose stockholders are Exxon, Texaco, Mobil, and Standard of California. These stockholders set the price at which the oil is sold, and since they get back whatever they pay in dividends, they do not care how high the price is. The foreign subsidiary thus can take the profit, while the ultimate corporate stopping point, the U.S. side of the operation, has a higher cost basis for the products it sells to the American people. In this way, much of the multinational's own inflated costs are in reality the higher prices that they have charged themselves abroad and passed on to the American people. Form, not substance, is the name of the game in oil company accounting practices—and, unfortunately, in the tax treatment of the oil industry by the Internal Revenue Service.

Not surprisingly, it is just these companies, the multinationals, that are the biggest profitmakers. Standard of California's profits rose 54.3 percent last year, Exxon's rose 59.3 percent and Gulf Oil's rose 86.5 percent. It is just these corporations that will be able to escape the potential sanctions of the windfall profits section of the legislation before us today.

Thus, Mr. President, under the first of the criteria that I have used to evaluate the effectiveness of this legislation, its ability to limit prices and spread the burden of the crisis more fairly, **section 110** must be regarded as an inadequate answer. Price control can be meaningful, under this legislation, only as far as the physical borders of the Nation. The biggest profitmakers will remain relatively unburdened and profitable beyond their needs. Equally as distressing, though, in my judgment, is the utter failure of the legislation to strike a balance between profitmaking and energy development or to address the pressing issue of overall tax equity in our treatment of the petroleum industry.

While the legislation before us contains a number of provisions aimed at energy conservation and development, the windfall profits section of the act. I fear, fails to take account of the delicate balance that must be struck between retaining an incentive to development and eliminating any unfair and unnecessary profit margins. Again, it is the small independent producer that shoulders a disproportionate burden in the exploration field. Since the act aims itself principally at this side of the industry for the reasons heretofore discussed, I think it would have been appropriate to spell out in greater detail than has been done in **section 110** just how that balance ought to be struck.

I am convinced that only a combination of meaningful price controls on the domestic side of the industry and a carefully tailored excess profits tax on the multinationals will serve to accomplish the goals of this legislation. I have begun to work on such excess profit legislation, and hope to be able to introduce it in the Senate sometime in the very near future.

I should point out that I am well aware of the pitfalls posed by the concept of an excess profits tax. I realize the difficulty of definition that is presented by the term "excess profit," and I recognize that it is the responsibility of the Congress, not the Internal Revenue Service, to define it with precision. But, when all things are considered, I am con-

vinced that this is the only approach that we can take to bring within the rubric of the regulation we are today considering the multinational oil industry. I find no comfort in effective control on the prices of domestic oil, while the biggest of our suppliers escape, not only price controls, but also any meaningful form of income taxation.

What I am today suggesting is a tax patterned on the excess profits tax that was in operation during the Korean war. Its focus will be the multinational oil companies, and in operation, it will assure that, at least for purposes of this tax, the interest that a multinational corporation has in a foreign subsidiary will be reflected in the tax base utilized. In essence, the profits that a multinational oil company pockets in a foreign subsidiary, are not unlike income that an individual deflects to other recipients—and, income of this nature is taxable to the primary recipient, by virtue of the control that is exercised over the flow of funds.

I intend to combine with this tax proposal an amendment to the present Internal Revenue Code treatment of the oil industry. Under the code, taxes paid to foreign governments are regarded as generating a dollar-for-dollar tax credit for purposes of U.S. taxes, on the theory that double taxation of income is inappropriate. That principle is quite justifiable where true taxes are involved. However, the Internal Revenue Service allows an oil company to treat what are really royalty payments to a foreign nation as though they were income taxes. I shall propose to eliminate this practice. No other industry, no individual, is allowed to treat a royalty as though it were an income tax. Royalties are essentially a cost of doing business, and, hence, should generate nothing more than an ordinary deduction. Treatment of the oil industry just as we treat everyone else in this respect is a long overdue first step in reform of the tax treatment accorded this industry without apparent justification.

Finally, Mr. President, I intend to vote for the Energy Emergency Act not because I like the form of its windfall profits section, but because I believe it will be helpful in finally forcing the needed rollback in domestic prices and excess profits tax on the multinationals that I have described. I am afraid that defeat of this act will serve only to delay the truly effective legislation that is needed to deal with the energy emergency.

Mr. Bentsen. Mr. President, I have stated during the consideration of the Energy Emergency Act my reservations concerning some of its provisions. The country faces an energy shortage and the Congress must act to alleviate that shortage and to make sure that no one segment of our society unduly benefits or suffers in the process.

The manner in which we respond to this National energy shortage, however, may be more important to the future of the country than the present shortages themselves. We are establishing through the Emergency Energy Act both a program, and the bureaucracy to administer it, that will deeply affect the lives of every American citizen without exception.

This is not the kind of legislative step that should be taken in a crisis atmosphere. One that is charged with heated rhetoric, fraught with hastily contrived compromises and based upon inadequately developed information. The country expects better if we will give ourselves the chance.

My specific objections are as follows:

The proposed administration of the program devised under the bill is left to an independent agency which has little clear authority and which provides no guarantee of continuity with the existing programs of the Federal Energy Office. Second, the bill contains a labyrinth of administrative requirements and procedures that may very well hamper rather than help efforts to curb energy consumption and increase supplies.

Finally, the windfall profits provision of **section 110** of the conference report offers little hope of real protection for the consumer and would further aggravate the fuel shortage by causing chaos in energy producing and distributing industries.

I am very concerned about the complex administrative and judicial procedures provided for in **section 311** of the bill. The provisions of this section alter considerably the requirements of the Administrative Procedures Act and substitute a confusing amalgam of features contained in both the House and Senate bills. Some argue that the new Federal Energy Administration must be able to act with speed and without the delay of drawn-out administrative proceedings. I for one feel that regulations that will deeply effect the most essential aspects of our lives deserve the inspection and comment of the public. Just the brief experience we have had so far with the Federal energy allocation program demonstrates how monstrously complex the problems are when a Federal agency attempts to regulate some 200 million lives. With these programs there is a ripple effect which can magnify a bureaucratic bungle into a major catastrophy for whole segments of our society.

This is why I offered an amendment in the Senate that would have guaranteed at least 5 days for interested parties to comment on a proposed regulation. That guarantee has been watered down in the conference report so that regulations can be implemented whenever the administrator feels they are essential to the program. We have already witnessed the cavalier manner in which the Cost of Living Council used a similar loophole to implement its rulings and I do not want to see the mistake repeated with the Federal Energy Administration.

Another point of concern to me is the weakness of the administrative provisions of the bill and the unclear authority that is to be used in carrying out energy conservation programs. The bill establishes an independent agency to administer Federal energy programs **[Sec. 103]** and then says virtually nothing about how that agency is to be staffed, funded, or to integrate its activities with other Federal agencies. The Congress has already made considerable progress on a separate bill, the Federal Energy Administration Act, which would provide us with a fully constituted and carefully considered energy administration to carry out what will be the most crucial Federal program to be undertaken in decades. The House will soon be considering this legislation and the Senate has already approved its version. I believe there is time to wait when the results will be so obviously better and the matter is so clearly important.

The most controversial feature of the bill in my opinion is that relating to so-called windfall profits. As I have said before, no industry, no company, and no individual should be allowed to make unconscionable profits from the troubles of this country. I believe some

tax to deal with windfall profits should and will be enacted. Hearings are being held before the Finance Committee for that purpose. However, **section 110** in this bill would not accomplish its purpose of preventing windfalls but it would aggregate the current shortage. I have spoken before about this section so I will only briefly describe here my objections to it.

By this section we are calling upon a Federal board with no background and little expertise to determine what are reasonable profits and to set individual prices for as many 278,000 sellers of petroleum products. That is the number of sellers, at all levels, of petroleum products in this country. Under the terms of this section each would be subject to complaints to the Renegotiation Board by any interested party.

The Board would be called upon to make individual determinations of profit levels and set individual prices for each seller. The Board would be buried in cases; complaints would go unheard; and litigation would be endless. The petroleum seller, most of whom are small independent operators, would be hamstrung by endless bureaucratic proceedings and the consumer would have little hope of a speedy or conclusive decision.

In addition to **section 110** failing to accomplish its intended purpose, I am very concerned about the adverse impact of the provision on petroleum production and investment during 1974. The provision is not effect until 1975 but if it does go into effect it will be retroactive to 1974 profits.

As a result of higher crude oil prices, domestic producers are receiving more today for their present level of production than they were during the base period provided in **section 110**. To the extent their costs have not increased as fast as oil prices they are already over the profit margin allowed and for every barrel of increased production they sell this year will be that much more over the allowed margin. This provision actually prohibits increased production during 1974 for most producers.

So at a time when the country is exploring every avenue to increase our energy resources the Congress is considering a bill that might very well stop new petroleum exploration dead in its tracks. Hardly a result that I believe most Members of this body would care to see.

Mr. President, in sum I find great flaws in the conference report we have before us. I cannot support its passage and I hope the Senate will seriously consider its weaknesses before passing this monumental piece of legislation.

Some have asked whether we can afford to wait another few weeks to pass additional energy legislation. Mr. President, I feel we cannot afford not to wait if time will give us a better view of the problem and a clearer understanding of what our response is to be. The people are not just expecting a bill—they are expecting a solution that works. I believe we must not fan their expectations and for that reason I will oppose the conference report.

Mr. McGee. Mr. President, since I am opposed to S. 2589 in its present form, I am voting in favor of the motion to recommit the conference report on this legislation.

I am particularly disturbed over the windfall profits section of S. 2589 as it is presently written, but not because I do not favor enact-

ment of legislation to prevent windfall profits or price gouging to protect the public during the energy crisis. I do favor such legislation. However, I am disturbed that the windfall profits section is unworkable in its present form; would create an administrative nightmare; and in all probability, would worsen the energy crisis, which in turn, would have an even greater detrimental impact on the consumer.

Testimony offered by a wide range of tax experts in the past few days warn that the windfall profits section of S. 2589 is completely unworkable.

We have heard former IRS Commissioner Sheldon Cohen warn that it is "virtually unadministerable."

We have also heard from other tax experts that oil industry investments in new energy sources would be deterred by significant uncertainties which this section promotes, as it is presently written.

In fact, not one tax expert has stepped forward in support of the windfall profits section of S. 2589 in its present form. Every expert who has offered his views on this section has been emphatic in his assessment of the difficulties associated with the section as it is now written.

I honestly believe that the Congress has the capability, and should exercise this capability, to draft legislation that would indeed block excessive profits while, at the same time, spur investments in the production of more energy.

It is for the reason I have outlined above that I will support the motion to recommit the conference report on S. 2589.

Mr. KENNEDY. Mr. President, I would appreciate the opportunity to explore some of the details concerning the conference provisions related to the Clean Air Act with the distinguished manager of the bill and with the distinguished Senator from Maine.

These provisions concern the people of my State and I have been extremely disturbed by them. I have received communications from the Governor of the State of Massachusetts and from the mayor of the city of Boston on this subject.

I hope that the clarification of the two distinguished Senators will resolve my problem.

On page 8, the report states:

> The Administrator shall, to the extent practicable and consistent with the objectives of the Act, by order, after balancing on a plant basis the environmental effects of the use of coal against the need to fulfill the purposes of this legislation, prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel burning installations. [Sec. 106.]

I interpret this "plant-by-plant balancing" to mean that, first, a prior determination must be made whether a major fuel burning installation is prohibited from burning natural gas or petroleum and converted to coal would endanger the public health. Second, a prior determination must be made that the plant is unable to directly secure those necessary clean fuels for operation and is unable to secure such fuels through the qualitative allocation authority granted under this act and the Emergency Petroleum Allocation Act of 1973 before it can be prohibited from burning natural gas or petroleum.

Is that the understanding of the Senators?

Mr. MUSKIE. That is correct.

Mr. KENNEDY. There is a second question that I would raise with the manager of the bill which refers to **section 106**. Does the manager of the bill assume that this is designed to provide for the allocation of low sulfur fuels, including coal, to those areas where there would be a health danger if high-sulfur fuels were burned and if such low-sulfur fuels are available? In other words, the EPA Administrator would have the power to require the allocation of low-sulfur fuels away from an area where burning high-sulfur fuels would have a minimal health effect to an area such as the high density areas in Massachusetts and the Northeast were burning such fuels could have a very damaging effect?

Mr. MUSKIE. The Senator is correct. That is what is intended.

Mr. President, as debate over the energy crisis has taken shape in recent weeks, it has become more and more clear that crucial to any solution of the problem is information—information which could tell us how bad the crisis really is, but which we are told is simply not available for those in government who are trying to define a national energy policy.

The optimists believe this information would tell us that there is no energy crisis.

The confirmed skeptics believe the information would prove that the crisis is a hoax.

And the pessimists insist that information would show that the crisis is worse than the most dire predictions we have heard.

No doubt, the truth lies somewhere in between. Just where is a factor which will affect the everyday life of this country for a long time to come. In the meantime we continue to operate in a partial vacuum, a situation which is clearly tolerable.

In the midst of all these charges and countercharges over the scope of the energy crisis, a new and interesting idea has been put forth by Ralph Nader and Jonathan Rowe, of the Tax Reform Research Group, which I would like to share with my colleagues.

Nader and Rowe draw a very credible connection between the need for information about energy reserves in this country and the issue of property tax reform. They point out that there is a body of public officials—the local property tax assessors—who should have at their command very detailed information about the size and value of energy reserves such as oil, coal, and natural gas in every State in the Nation. Mineral reserves are very much real property, and accessors are supposed to locate and value them accurately.

The fact of the matter, of course, is that many assessors are not performing this function, for a number of reasons ranging from a simple lack of resources for such complex assessments to collusion with the owners of mineral property. There is no shortage of examples of tax assessors simply accepting the valuation figures given them by the local mineral company instead of conducting their own assessment of the property. The result of such poor assessment practices is triply negative—no information, artificially low property taxes acting as an incentive for mineral companies to keep their reserves in the ground, and local communities cheated out of tax revenues needed to support local services.

By comparison, in those States where property tax assessment practices are sophisticated and up to date, the assessor's records can be

the source of highly reliable information on energy reserves which serve the public need in a number of ways, as the following article from the Los Angeles Times demonstrates.

The call for property tax reform has gone unheeded for a very long time. We now have a compelling new argument in its favor.

Mr. PERCY. Mr. President, the energy crisis has clearly revealed the pressing need for the formulation and prompt implementation of a comprehensive national energy policy. The exploration, production, refining, distribution, and marketing of fuels are responsible for approximately $125 billion annually in economic activity, or roughly 10 percent of the Nation's gross national product.

Yet, it is all to apparent that the Nation lacks a rationally planned energy policy. The inadequacy of governmental efforts to assess our short-term and long-term energy needs, to analyze the reason for the current shortages, and to prescribe remedial action has resulted in the hardship and inconvenience that Americans are now experiencing.

Mr. President, as we all know, the past is often prolog. This is as true of the energy crisis as it is of the other great events that must be seen in an historical perspective. It is for this reason that the Permanent Subcommittee on Investigations has been holding hearings over the past several months in an attempt to understand the origins, and hopefully the future trends, of our present petroleum product shortage. The valuable information generated by these hearings should also be instrumental in the development of a responsible long-range energy policy for the entire Nation.

The complexity of the energy crisis, with its rapidly ascending consumption functions, its declining supply curves, and the attendant higher fuel prices and the loss of jobs, is very great indeed. There is a need for a better understanding of the available options for fulfilling the rising energy requirements of our expanding economy. Hopefully, enlightened public debate about possible policy choices will lead to the formulatoin of far-sighted national energy policy.

To date, the United States has spent a relatively small amount of funds for the research and development of new energy resources. A very high percentage of this research and development effort has gone into the development of nuclear breeder reactors. Research in other alternate energy sources has been badly neglected. In addition, until recently our rather feeble national energy policy has been focused almost completely on the provision of sufficient quantities of energy to meet steadily increasing consumption. Consequently, efforts directed at conservation and the efficient utilization of available energy supplies have been largely ignored.

Mr. LONG. Mr. President, the time has come for the Members of this body to reassess the significance or importance of accepting the conference report on S. 2589, and bowing to the will of the House on the matter of a windfall profits curb. As you may remember, the conference report on S. 2589 was brought up on Friday, December 21, and we learned for the first time that the Senate conferees had accepted a House amendment to S. 2589 which would impose a curb on windfall profits by sellers of petroleum products. [Sec. 110.]

This amendment was adopted by the House Committee on Interstate and Foreign Commerce, a committee which did not have jurisdiction over the matter. It acted without any public hearings and apparently

without any consultation with technical experts, which would be customary in legislating in such an important area.

The House passed this measure, including the windfall profits provision, despite the urging of acting chairman of the Ways and Means Committee Al Ullman that the windfall profits provision was ill-advised, deficient in technical respects, and deserving of public hearings by his committee and despite Mr. Ullman's commitment that the Ways and Means Committee would take up the matter of windfall profits legislation early in this session.

When I learned of the precise nature of this windfall profits provision in the conference report on December 21, which was even before the official conference report was printed, I knew that I had a responsibility to the Senate to point out the evils of the proposed windfall profits curb, based on my experience as a member and presently chairman of the Finance Committee. Because of the urgency of action on the Energy Emergency bill, I joined with other Senators in seeking a compromise which would permit enactment of S. 2589 without the windfall profits provision. In the tumult of the last day of the first session, the House was unable to agree to a compromise which would have deleted the windfall profits provision.

As I stated at that time, I favor a tax on windfall or excess profits which has been subject to the regular legislative process of public hearings and consideration by the proper committees, with the customary assistance from the technical experts. I would expect that such a windfall profits or excess profits tax would deny the oil companies unreasonable profits during the energy crisis, which the public rightfully demands.

At the same time, I would expect that such legislation would take into account in some fashion the fact that the Nation expects our private energy industry to make vast expenditures of capital in the next decade if the Nation is to meet its goal of self-sufficiency in the energy area.

My efforts to bring some logic and reason to bear on the hastily devised and ill-conceived windfall profits curb in S. 2589, which is little more than a giant swat at the oil companies in a panic response to the public outcry at price gouging in some areas of petroleum marketing, has been labeled in some quarters as a filibuster to protect the profits of the major oil companies.

I have at times defended against unreasoned and hysterical attacks on the oil industry, since the basic stability of the oil industry is important to my State and to the Nation. In this case, the record is perfectly clear that my opposition to the windfall profits curb in S. 2589 is not in any sense a blind opposition to the concept of windfall profits tax or an unjustified defense of the oil companies.

Quite the contrary, I have stated repeatedly on the floor of the Senate that I am actively in favor of the enactment of laws to prevent price gouging and profiteering in situations affected by the energy crisis. In this connection, I ask that a paragraph be included at this point in the Record from a newsletter I sent almost a month ago to my constituents explaining my position on this subject.

We should not allow energy companies to take unfair advantage of the current crisis to make excessive or "windfall" profits. Whether this should be prohibited

by excess-profits taxes or by a stiff requirement that any such profits be reinvested in energy production, or a combination of both, is a subject being carefully studied by the Senate Finance Committee, of which I am chairman. A tax on windfall profits can be drafted in such a way so we will get more energy. It should not be done in a manner that denies us more fuel.

I know that many Senators were interested in and are still studying the results of hearings which the Finance Committee held last week on a windfall profits tax proposal based on the definition of windfall profits in S. 2589. The committee invited former high officials of the Treasury Department, serving in both Democratic and Republican administrations. We invited them to comment on the administrative problems presented by such a vague standard for defining windfall profits and to indicate the type of advice they would give clients if this were law.

First, let me indicate the names of some of the former officials giving their comments. Included were former Commissioners of Internal Revenue Service Mortimer Caplin, Sheldon S. Cohen, Randolph W. Thrower, and Johnnie M. Walters; former chief counsels of Internal Revenue Service Charles W. Davis, Crane C. Hauser and K. Martin Worthy; former Under Secretary of the Treasury Edwin Cohen; former Assistant Secretary of the Treasury John E. Nolan; and former tax legislative counsels of the Treasury Department Donald C. Lubick and Jerome Kurtz.

These former officials generally agreed that the standard of reasonable profit used in the windfall profits provision of S. 2589 is virtually unadministerable. In fact, it is no standard at all. Many were vigorous in their criticisms.

Mr. President, in an effort to bring to the attention of each of my colleagues the highlights of the testimony given by these distinguished tax administrators. I addressed a personal letter to each of my colleagues and had it hand delivered to each of their offices this morning. I ask unanimous consent that a copy of this letter be printed in the Record at this point as further indication of my sincere effort to divert the Senate from the enactment of what would be bad, bad law.

U.S. SENATE.
Washington, D.C., January 29, 1974.

DEAR COLLEAGUE: Like you, I *favor* enactment of legislation to prevent windfall profits or price gouging to protect the public during the energy shortage. It is possible to draft legislation of that sort which will not impede our efforts to expand domestic production.

Unfortunately, the "windfall profits" amendment which the House of Representatives added to S. 2589, the Emergency Energy Act, fails completely to do what we should be trying to achieve. It will result in drastic cutbacks in oil and gas production. People who have worked honestly and diligently to expand oil production would be discouraged from continuing that effort by the imposition of what in many cases might be a confiscatory tax on the return from any expanded production.

The proposal found its way into the Emergency Energy Act without the benefit of any hearing or expert advice whatever.

At a hearing last week before the Senate Finance Committee, those who have administered the revenue laws under Presidents Truman, Kennedy, Johnson and Nixon testified unanimously that the proposal was unworkable, could not be administered and is probably unconstitutional.

They testified that this proposal would create such uncertainty in the industry that new capital investments would be greatly discouraged. It was their conclusion, and mine, that if the Congress is capable of acting in hysteria to put such a law on the books, there is little reason to assume that we will act reasonably

later on. The industry and the lending institutions would simply decide not to risk major new investments until the issue is resolved. Excerpts from their statements are attached to this letter.

It is for these reasons, as well as several substantial objections made by the Administration and others, that I hope you will join me in voting to recommit the Conference Report on S. 2589. This nation has much to gain and nothing to lose by further study of this far-reaching legislative proposal.

With best regards, I am

Sincerely yours,

RUSSELL.

Mr. LONG. What should be of grave concern to this body, is that seven of our witnesses thought the vagueness of the windfall profits provision raised a serious question of constitutionality. While generalities and vague standards of excessive profits on the Renegotiation Act have been upheld by the Supreme Court, based on the wartime emergency powers and the fact that defense contracts agree in the contract to submit to renegotiation, there is no similar justification for the present windfall profits provision.

For example, if the Congress can limit petroleum sellers to the profits they realized during 1967–71, then Congress can limit the farmers and the doctors to the profits they realized on their products and services during the period 1967–71. This matter surely deserves more careful consideration than it has received thus far.

How is the proposed windfall profits provision going to affect our efforts to get the petroleum industry to discover new reserves and expand production and refining of petroleum? On this point, former Commissioner Caplin states:

I think the consensus that you have heard today is that this bill is not the way to do it, that it is such a terrible disincentive that you are going to throttle any desire to move forward and open up new fields.

Former Commissioner Walters states:

I think if this law should be enacted that many, and certainly I, would advise any client I had definitely against making any investment which would subject him to this windfall profits tax except in the case of greatest urgency where it was a necessity to retain a lease of some rights.

Former Commissioner Thrower says:

It I had [any clients affected by the tax] the first suggestion I would make is to increase very substantially your retainer, as we will be busy for years to come litigating over this monstrosity.

Charles W. Davis, chief counsel of Internal Revenue Service under President Truman compared the vagueness of the windfall proposal with the consideration given the Excess Profits Act of 1950, stating:

Although that law was enacted during a period of approximately 6 weeks, from the beginning of hearings in the House Committee on Ways and Means to its signature by the President, there was a consistent theme expressed by witnesses before the tax writing committees and by committee membership that the standards for computation of excess profits subject to the excess profits tax should be explicitly stated in the statute, with much less reliance upon vague generalities than had been the case under the World War II Excess Profits Tax.

I have great respect for these former Treasury officials, who served under Presidents Truman, Kennedy, Johnson, and Nixon. When they express their views, as experts in tax administration, that this windfall proposal is unworkable, unadministerable, probably unconstitutional, and would be the basis for advising clients to hold back on investments

in the petroleum area until these vague standards could be clarified if ever, I ask the question: Why should the Senate proceed to enact such a law?

Is it more important for the Senate to pacify on a temporary basis those consumers who are understandably outraged by spiraling fuel prices by passing a law which is patently ridiculous, or is it the Senate's business to help find enduring solutions to the Nation's energy problems?

I, for one, feel that it is time to remove some of the emotion and hysteria from the legislative process which has prompted the Congress to even give serious consideration to such a proposal that is now before us.

It has been very revealing to me, Mr. President, that few—if any—Senators have come before this body to state their specific approval for the House provision. No one to my knowledge has stepped forward to say: "I like the Staggers amendment. I think it would make good law. I have studied it and find that it is workable and can be fairly administered. I think it will help solve the energy shortage.

Mr. President, such specific support for the provision by any one of my colleagues would astonish me. It would run contrary to the opinion of every one of the Nation's top experts in administration of tax laws—Democrat and Republican, liberal, and conservative—to whom I have referred above.

At this point, it appears that even some of its original sponsors and supporters in the House are wishing that this preposterous thing would sprout wings and fly away.

They fear that if it gets into the law it will be a black mark on their responsible lawmakers.

They are beginning to see that this amendment is aptly named—that it would, indeed, stagger the Nation by disrupting and discouraging the kind of capital investment in domestic oil production that might some day free us from high-priced and unreliable imports.

I ask my colleagues that for all these reasons they vote to recommit the conference reports to S. 2589 and to allow the tax-writing committees of the Congress the opportunity to design a proposal which would both protect the consumer from price gouging and profiteering and which will, at the same time, allow the industry to attract those huge amounts of capital which will be necessary to expand production and to bring to the Nation a high degree of energy self-sufficiency.

As the Senate knows the House Committee on Ways and Means has already announced public hearings on this subject. The Finance Committee has had 2 days of full committee hearings already, and only yesterday I announced additional hearings to coincide with those of the House Committee.

Mr. HUMPHREY. Mr. President, the Labor Department's statistics confirm that perhaps as many as 100,000 jobs have already been lost as a direct result of the "energy crisis." And this, the experts agree is merely the first ripple in the waves of energy-related joblessness that we can expect in 1974.

Administration economists have themselves predicted that the "energy crisis" will cost over a half million American workers their jobs. Others have projected losses of as much as twice this figure.

Mr. President, the unfortunate American workers who have lost or will lose their jobs as a result of fuel shortages cannot be asked to

shoulder the lion's share of this "energy crisis" on their own. This just is not fair.

Justice demands that, if we cannot prevent job losses from fuel shortages through national energy policy, then we must immediately initiate job and economic assistance programs to minimize the suffering of these workers and their families.

Mr. RANDOLPH. Mr. President, the conference report on the Emergency Energy Act has been before the Senate for more than a month. Its provisions were carefully developed in conference and they were extensively debated in this body prior to the Christmas recess. While this legislation was not enacted before the recess, the period during which Congress was not in session gave us an opportunity to further reflect on this conference report. Temporarily freed from the immediate pressures of time, Members of the Senate could examine this measure carefully and consider its effectiveness in coping with the energy crisis as well as its impact on other programs.

Mr. President, I am satisfied that this measure achieves its purposes in the most practical way possible at this time. This legislation is needed and, therefore, I oppose its recommittal to the Conference Committee.

There is no question that this is complex legislation and that its ramifications are widespread. The development of this bill was expedited but its provisions were by no means arrived at hastily. The individual issues addressed have been considered for many months in the various committees of the Senate which have jurisdiction over these matters.

The Committee on Public Works has been particularly concerned with sections of the bill which relate to air pollution controls. **[Title II.]** Our committee developed the basic legislation in this area and we have kept continuous watch on its implementation.

The Senator from Wisconsin (Mr. Nelson) has indicated that one of his principal reasons for seeking recommittal of this legislation is its effect on the air pollution program.

The relationship of clean air requirements to the energy supply situation was thoroughly explored by the Committee on Public Works. We sought to determine what temporary adjustments realistically could be made in the air pollution program. We did not want, however, to be panicked into ill-conceived action that would undermine the basic integrity of the program and have little or no effect on the energy crisis.

It was in this context that members of our committee participated in the conference and devoted our earnest energies to sections of this bill relating to the Clean Air Act. The provisions of the conference report on this subject do not represent a retreat from our commitment to clean air. They are a realistic response to the current situation. The variances to the provisions of the Clean Air Act are temporary in nature and under no circumstances could they be implemented if such implementation would create a severe impact on public health.

I suggest to the Senator from Wisconsin (Mr. Nelson) that recommittal of this legislation would not result in significant change in the sections of the bill relating to the Clean Air Act. As in any conference report, this measure represents compromise, the establishment

of a common meeting ground between the differing viewpoints of the Senate and House of Representatives.

I further remind the Senator from Wisconsin (Mr. Nelson) that the air pollution provisions of the original House bill are much more lenient than those adopted by the Senate. The House of Representatives would have relaxed automobile emission standards and transportation control requirements of the Clean Air Act to a much greater degree than the Senate bill contained.

In addition, the requirements for coal-burning utilities over the next few years to assure compliance with ambient air quality standards by the new deadline are much more stringent under the conference report than the original House bill, and concessions in that area were hard-won by those of us from the Senate. I cannot conceive, therefore, that recommittal of this measure will achieve the results sought by the Senator from Wisconsin (Mr. Nelson) concerning the amendments to the Clean Air Act.

Considerable attention also has been focused on provisions of this bill dealing with what has come to be known as windfall profits. [Sec. 110.] Controversy over this issue, in fact, has threatened to divert our attention from other important aspects of the energy emergency. Substantial revisions in tax policies should not be undertaken hurriedly. I regret that attention focused on the windfall profits question, important though it is, has impeded our consideration of the total bill. I would have preferred that the matter of profits in the oil industry not be addressed in this emergency legislation. I do not believe its inclusion, however, is grounds for recommittal and consequent delays in passing this bill. Furthermore, the Senate Finance Committee and the House Ways and Means Committee have assured us that they will expedite consideration of this complex and important issue. We will have opportunity, therefore, in the near future to make any adjustments and provide amendments that may be necessary to the windfall profits section of this bill.

Mr. President, I am aware that there is some confusion and uncertainty about the extent and possible duration of the energy crisis. There is, however, no doubt about the existence of the energy crisis. The fact of shortages of our energy sources requires that we act with dispatch to adjust to these shortages. This legislation is an emergency bill and is so titled. It is intended to provide us with the mechanisms for accommodating our economy and our way of life to the current situation in the most equitable and least disruptive manner. Its provisions have been painstakingly drawn and I believe further delay in implementing them would be to the detriment of the United States.

Mr. JACKSON. Mr. President, this is the first real test in Congress as to where Congress stands as far as protecting the public interest is concerned.

We have argued this afternoon about the so-called renegotiation provision as if that were the only section of this bill. Mr. President, we sought a compromise on this, and the House rejected it. There were only 20 votes for the position of the Senate to take it out. That is all past.

Mr. President, the Senate has to decide whether we are going to do anything about protecting the consumer and the American public.

This bill provides protection for the franchised service dealer. It provides stringent antitrust protection. It provides for restrictions on the export of fuel. It provides for unemployment assistance. It provides for grants in aid to the States to carry out the allocation and conservation programs, and it provides for mandatory disclosure by the oil companies of their profits, of their inventories, and so on—something that the administration does not have. That is in this bill. And it provides for special authority to deal with price gouging and windfall profits.

You cannot talk out of both corners of your mouth on this issue, Mr. President. Either you are for doing something to protect the public interest, or you oppose it. If we recommit this bill, we will be taking away an incentive, first, to get an excess profits tax, and, second, we will be taking out all of these safeguards. That is the issue. Let us not kid ourselves. We have voted on this issue, and 20 votes is all we got. I offered this proposal with the renegotiation provision out, and only 20 Members of the House of Representatives voted for it. Do not go out of here saying, "Those poor fellows are having a terrible time with profits." Look at the charts on the wall. The lowest of the top 16 companies showed a 27.7 percent profit increase the first 9 months of last year, up to 96.9 percent, and that is what the discussion has been about this afternoon.

The Members of this body can decide, are we going to do something for the consumer who is being gouged, or are we going to worry about those poor fellows on that graph who are having a hard time—the 16 largest oil companies in the United States?

That is the issue.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Wisconsin (Mr. Nelson) to recommit the conference report on S. 2589.

All in favor indicate by——

Mr. JACKSON. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The VICE PRESIDENT. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCLURE (after having voted in the negative). On this vote I have a pair with the distinguished Senator from New York (Mr. Buckley). If he were present and voting, he would note "yea"; if I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. MANSFIELD. (After having voted in the negative.) On this vote I have a pair with the distinguished Senator from North Dakota (Mr. Young). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. Eagleton) and the Senator from Indiana (Mr. Hartke) are necessarily absent.

I further announce that, if present and voting, the Senator from Indiana (Mr. Hartke) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from North Dakota (Mr. Young), is absent on official business.

I further announce that the Senator from New York (Mr. Buckley) is necessarily absent.

The result was announced—yeas 57, nays 37, as follows:

[No. 14 Leg.]

YEAS—57

Abourezk	Dominick	Moss
Aiken	Eastland	Nelson
Allen	Ervin	Nunn
Bartlett	Fannin	Packwood
Beall	Fong	Pearson
Bellmon	Fulbright	Percy
Bennett	Goldwater	Proxmire
Bentsen	Gravel	Roth
Biden	Gurney	Scott, Hugh
Brock	Hansen	Scott, William L.
Burdick	Hatfield	Sparkman
Byrd, Harry F., Jr.	Helms	Stennis
Byrd, Robert C.	Hruska	Stevens
Cannon	Johnston	Taft
Case	Long	Talmadge
Cook	Mathias	Thurmond
Cotton	McClellan	Tower
Curtis	McGee	Weicker
Dole	McGovern	
	Mondale	

NAYS—37

Baker	Hollings	Muskie
Bayh	Huddleston	Pastore
Bible	Hughes	Pell
Brooke	Humphrey	Randolph
Chiles	Inouye	Ribicoff
Church	Jackson	Schweiker
Clark	Javits	Stafford
Cranston	Kennedy	Stevenson
Domenici	Magnuson	Symington
Griffin	McIntyre	Tunney
Hart	Metcalf	Williams
Haskell	Metzenbaum	
Hathaway	Montoya	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Mansfield, against
McClure, against

NOT VOTING—4

Buckley	Hartke	Young
Eagleton		

So the motion to recommit the conference report on S. 2589 was agreed to.

Mr. Nelson. Mr. President, I move that the Senate reconsider the vote by which the conference report on S. 2589, the National Energy Emergency Act of 1973, was recommitted to conference.

Mr. Fannin. I move to lay that motion on the table.

HOUSE CONSIDERATION OF FIRST CONFERENCE REPORT ON S. 2589, JANUARY 23. 1974

The Energy Emergency Bill

The Speaker pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. Crane) is recognized for 60 minutes.

Mr. Crane. Mr. Speaker, we will soon be asked to consider, for a third time, legislation which would accomplish the greatest peacetime transfer of power to the President in the history of the United States. The previous debates on the energy emergency bill have taken place in an atmosphere of crisis and pressure so great that few Members of this body even knew the content of the bills on which they were asked to vote. The proponents of this domestic Gulf of Tonkin bill forced it upon the Congress with no time for sober reflection on its grave implications for the rights of American citizens nor for the long-range effects which it is likely to have on the domestic economy.

Those same harbingers of doom have again set up a raucous chorus to try to reconstruct that hectic atmosphere of crisis in which we nearly gave away our birthrights without even the promise of a mess of pottage in exchange. But strangely enough, the Nation has survived for another month without that legislation which we were told was absolutely essential before Christmas. The oil supply shortage which spawned the hodgepodge of wrong answers which is supposed to pass for responsible legislation has not turned out to be as drastic as the pessimistic predictions of the Federal Energy Office had led us to believe it might be. We should take the time now to carefully examine the measures we are asked to adopt, to uncover their implications and to inquire whether they are even capable of solving the problem they are supposed to address.

Mr. Derwinski. Mr. Speaker, the gentleman from Illinois should be complimented because his is truly the first profound statement I have heard on the floor since the Congress has returned on Monday.

At this time I would like to reemphasize my view that wage and price controls in peacetime are undesirable. I intend to vote against extending the Economic Control Act.

I also believe that the President should terminate the operations of the Cost of Living Council as soon as possible and permit the economy to adjust in natural fashion.

As a matter of principle, I am opposed to controls on the economy in peacetime. Therefore, I opposed the bill the Democrats rammed through Congress which, in turn, the President used to impose economic controls. I am convinced that after a normal readjustment period the economy would progress far better without Government manipulation. Congress could contribute in a positive fashion by producing a balanced budget rather than a huge deficit which automatically feeds the fires of inflation.

Mr. CRANE. Mr. Speaker, I thank the gentleman for that most gracious statement.

Mr. SYMMS. Mr. Speaker, I would like to say that my good friend, the gentleman from Illinois (Mr. Derwinski) was one of those Members, along with me who wanted to see the House take an adjournment over Christmas, and I think that the fact that the Members have been home for the last month or so and visited with their constituents was reflected in the last vote that was taken on the question of back door foreign aid, in that it was voted down by a 2-to-1 vote.

So I applaud the gentleman from Illinois for his commentaries to the House right before Christmas when he said in effect, "Let us get out of here and get our thinking straightened out."

Mr. CRANE. Mr. Speaker, I would like to take a few minutes to explore this last point. I do not propose to trace the dismal history of Government control of economic activity from the time of Hammurabi. It will be equally instructive, and more germane, to look at some of the Government activities which have led us into the trap from which we are now struggling to escape.

It has been a long standing policy of the U.S. Government to encourage investment by American companies in foreign countries. Since the Revenue Act of 1918, for instance, taxes paid to foreign governments have been deductible, dollar for dollar, from taxes owed to the U.S. Government. A ruling of the Internal Revenue Service some 20 years ago had the effect of allowing the same treatment for royalty payments to Arab rulers. Other provisions of our tax laws certainly have not been designed to discourage development of foreign oil reserves. Drilling expenses abroad can be charged off against current income, and the same depletion allowance is applicable to production from foreign and domestic reserves.

Having set the sorcerer's apprentice in motion, our Government began to realize that the results were not all beneficial. The cost of getting the oil out of the ground in Arab fields was very low, and the tax provisions meant that our Government was paying the cost of getting it out of the Arab countries. The natural and predictable result was that large quantities of Arab oil became available in U.S. markets at prices below those at which it could be produced here. The response of our Government was equally predictable, if not as natural: it imposed oil import quotas, in the name of national security. Having encouraged development of foreign sources of oil, in part to slow the depletion of our own reserves, the Government then prohibited the use of that foreign oil in order to protect our domestic industry from its own success abroad.

Under this security blanket, American oil producers built the refineries and produced the oil needed to meet domestic demand during the last decade. But there was little incentive for them to search out new domestic sources of oil. In fact, there were real disincentives, including another government policy which some in this body consider to be nongermane to the energy emergency. Since oil and natural gas frequently occur together, the strict regulation of the price of natural gas has not only inhibited the supply of that commodity, but has had a parallel effect on oil supplies.

The net effect of government policies with respect to the oil and gas industries has been that new domestic discoveries peaked in 1956 and have been on a steep downcurve ever since.

The next piece in this tragic picture was provided by the Congress, almost as an afterthought. To a bill to extend the Defense Production Act of 1950 it added a new title giving the President authority "to stabilize prices, rents, wages and salaries." Although he neither requested nor wanted that authority, he used it within a year. It is no coincidence that our dependence on imported oil has skyrocketed since prices for oil products were fixed. The Federal Trade Commission recognized the basic economics of this situation in the report which provided the basis for their recent complaint against the major oil companies for anticompetitive practices. Although it was intended to make a different point, that report lists as one of the causes of the present shortage—

> The fact that major station gasoline prices have not been allowed to reach their natural level during the period of shortage in certain areas of the country. Incidentally, other causes which they also cite include the Oil Import Control program and Government induced barriers to entry which have inhibited nonintegrated firms from entering into refining.

I do not intend to discuss in detail the miserable results of the cost of living stabilization program. Not only has it failed to stabilize the cost of living, but it has created shortages which would never have occurred without it. One particularly germane example is in the petrochemical industry, where artificially low domestic prices have made it impossible for manufacturers to obtain the feedstocks for our plastics industry. The shortage of necessary materials has had a devastating effect on an industry made up largely of small businesses.

Mr. Rousselot. Mr. Speaker, I appreciate very much the gentleman yielding. I wish to associate myself with my colleague, the gentleman from Illinois (Mr. Crane) in his effort to try to encourage some kind of a rational discussion concerning the entire issue of the so-called energy crisis. It is my opinion that it really should be labeled the "energy challenge."

Mr. Speaker, I have contended since the beginning of this so-called "energy crisis" that the nature of the situation has been overplayed. What we are now facing is actually a regulation crisis. The actions taken by the Federal Government in the past have created this problem, and the recent Government mandates have tended to complicate rather than to alleviate the situation, I firmly believe that if the free market were permitted to operate, our country would be able to develop new sources of energy more efficiently than can be done through a Federally managed "crash" program; and, this would be without the oppressive interfence with our personal liberty which the current program entails.

A recent article from the London Economist, reprinted in the Los Angeles Times of January 13, 1974, indicates that a "crash" Government program may result in an energy "glut" by the end of the decade. The article emphasizes that neither computers nor hundreds of Government economists can deal with the intricacies of energy planning and action as efficiently as the automatic mechanism of the free market.

This same point was made in a recent Wall Street Journal editorial, January 11, 1974, which observed that while Federal energy czar William Simon is "probably the best man for the job," he still cannot "outperform the marketplace."

The price controls in all four phases have resulted in our scarce energy supplies being provided at artificially low prices. The low prices have only helped increase demand without providing the necessary capital to increase the supply. Only through the pressures of foreign supplies has the Government began to recognize their mistake—the Government has not yet found a way to enforce price controls in the Mideast. In an ill-fated attempt to deal with a market they cannot control, the Government has lifted the price restrictions on new oil in the phase IV economic plans.

The decision by the administration to adopt the two-tiered price system for crude oil was made in spite of the fact that it has been tried and failed in the past. It was this very system that has been used as the method of pricing the sale of natural gas. Even the administration has recognized the failure of this method to provide sufficient gas energy. The Federal Government should immediately abandon the two-tiered system of crude oil pricing by removing all price controls from petroleum and petroleum products. The use of price controls on any item in short supply can only add to the problem, not solve it. As a matter of fact, price controls have actually been responsible for creating shortages where none existed before the controls were imposed.

If the supply of energy is to be increased, the price must be allowed to rise to levels which would attract the necessary capital to make possible the development of additional sources of energy. As Dr. Milton Friedman, professor of economics at the University of Chicago, observed in a column which appeared in Newsweek, November 19, 1973:

> The most effective way to cut consumption and encourage production is simply to let the prices of oil products rise to whatever level it takes to clear the market. The higher prices would give each of the 210 million residents of the U.S. a direct incentive to economize on oil, to find substitutes for oil, to increase the supply of oil.

Many of our problems with energy supplies have developed as a direct result of environmental pressure in the name of consumer protection. A large portion of our supply shortage is due to self-inflicted wounds, such as delays in the construction of the trans-Alaska pipeline which has added years to its completion date. There is no reason why the United States cannot add new domestic supplies without causing any great harm to our environment.

It is time that we take a reasonable position on the question of air quality. The administration of the provisions in the Clean Air Act of 1970 should be modified to some extent, especially in relatively unpopulated areas, to permit the burning of coal for a few years until the shortage abates.

Another constructive step would be to deregulate the price of natural gas at the wellhead in order to encourage the discovery of new sources of this low-sulfur fuel. According to information obtained by the American Enterprise Institute from the American Association of Petroleum Geologists, the number of productive wells drilled in 1972

was 1.285 which is less than 50 percent of the number of productive wells drilled in 1956. A similar decline has also taken place in the drilling of dry holes.

I am firmly convinced that one of the most detrimental actions the Federal Government could take would be to institute gas rationing. It should be self-evident that rationing cannot itself produce more gas. In fact, even the most ardent advocates of rationing admit that rationing is only a means of allocating the supply.

In conclusion, if the Federal Government really wants to do something constructive about the "energy crisis," it should remove the impediments that it has placed in the way of the free market.

Mr. CRANE. Mr. Speaker, one particularly germane example of the negative impact of the cost of living stabilization program is in the petrochemical industry where artificially low domestic prices have made it impossible for many manufacturers to obtain the feedstocks for their plastic industries, and this shortage of such existing material has had a devastating effect on an industry made up largely of small businessmen.

Mr. SARASIN. Mr. Speaker, I would like to congratulate the gentleman on the attention the gentleman is bringing to the shortages as they exist in the petrochemical industry.

I would like to point out for the Members of the House, and for the purpose of the record, that the most efficient use of a barrel of oil is in the petrochemical industry, where the requirements of that industry are only 2.9 percent of that barrel, and yet this industry provides some $60 billion toward our gross national product. Also that a situation where a mere 15 percent reduction in the petrochemical plastic production would result in the loss of 1.6 to 1.8 million jobs in this country. I think that where so much of what we do here in the House of Representatives is directed toward the retention of jobs and for the creation of new jobs, that to see a situation develop, such as that which is now existing in the petrochemical industry, is indeed bad.

It would seem that sometimes allowing controls is a solution, but when they turn out to be long-range disasters because the price controls, as they have been applied to the plastic industries, have shown that they would have been better off with no controls whatsoever because the major producers—and there are only 18 of them in this country—are now exporting their products overseas because the market is more profitable for them there.

Thus the controls prevent these products from being available to the domestic processors, where the allocations that are made are not made at the processors' level, so that the processors, the users of the plastic materials, are not being fed allocations sufficient to keep them in business. And as long as we continue to allow price controls to exist we will see that happen. Because of that we have seen black markets develop and while they may not be strictly illegal, they are certainly illegal and immoral insofar as motivating the producers to ship their materials, say, from where it leaves a gulf port, and then comes around the coast to New Jersey, where it is unloaded at a domestic port as an import, so that it can be sold at higher prices.

We have seen manufacturers moving out of the basic plastics industry, stop making whatever gadgets they might make, turn their

inventory around and sell it to another company so that they can make a greater profit.

It does not take much of an imagination to see what effect the petrochemical industry has over our life style; all it takes is to merely look around and see all of the artificial products made from plastics—film, aspirin, just about everything you can think of—comes out of that barrel of oil.

So, Mr. Speaker, again I congratulate the gentleman from Illinois for bringing this to the attention of the Members of the House of Representatives.

Mr. CRANE. Mr. Speaker, I would like to take this opportunity to thank the distinguished gentleman from Connecticut (Mr. Sarasin) for his remarks, and to also congratulate the gentleman for directing the attention of the Members to an area in the Emergency Energy Act legislation that was so sorely neglected when we had that legislation before us; namely, the petrochemical industry.

I think that this stemmed from a lack of understanding on the part of Americans at large, as well as many of the Members here in the Congress, as to just exacty what the impact of that industry is on our economy.

I think with respect to the discussion on the imposition of controls, particularly export controls on the feed stocks for the petrochemical industry **[Sec. 115]** which are going out to find free market prices, that these controls in the long run are a very negative way to deal with this problem. And I think that one way, which I believe is favored by most of the industry, is simply the elimination of controls which have caused these vital feed stocks to find better markets abroad rather than staying here at home to provide the materials for this essential industry that maintains so many jobs in our country, as the gentleman from Connecticut (Mr. Sarasin) has so ably pointed out.

Of course, we have been able to solve some of the problems created by injecting the Government into the business of running the economy. The meat shortage was abated by the only means which would have prevented its occurrence in the first place: allowing the price to rise so that suppliers and consumers adjusted their priorities. When they did, the shortage just disappeared. I wonder how many of the people who are now fervently begging for gasoline rationing were advocates of meat rationing last summer?

The Congress added its own phase II last November when it not only authorized but ordered the President to allocate oil supplies. That program is working about as well as could be expected. News reports this morning said that stations of one of the major oil companies in the Washington area are out of gasoline as a result of the new allocation system. And how did the Federal Energy Office persuade the oil companies to increase their production of fuel oil in relation to gasoline? They had the Cost of Living Council raise the ceiling price for fuel oil by 2 cents per gallon and reduce the price of gasoline by 1 cent. I hardly need to point out that this ingenious solution is one which would have occurred natually in a free market if the demand justified it. We can get a clue as to the prospects for future success for the oil allocation program from the briefing given to representatives of the oil industry when the controls took effect. There, some eager

young bureaucrats admitted they knew very little about the oil industry, told the representatives what they were going to have to do, and then tried to cajole them into helping to work it out together. What was their inducement to cooperate? They made it very clear that the oil industry would take the rap if the allocation system did not work.

And now, to these wonderful people who gave us phase I, II, III, and IV, we are being asked to give the authority to ration all petroleum products [Sec. 104], to force individuals and businesses to conserve energy their way [Sec. 105], to require production from oil wells at rates which will jeopardize ultimate recovery of the maximum oil in them [Sec. 108], and to decide whether the oil companies are making windfall profits as a result of prices and allocations over which they have no control. [Sec. 110.]

I do not intend to disparage the hard working bureaucrats who have been struggling to administer the programs which this Congress has already forced upon them. But the fact is that they have already proven, time and again, that the job cannot be done by ordinary mortals. You may pool the whole Federal bureaucracy, and the real King Solomon will not stand up.

In principle, the intent of gasoline rationing is to achieve an equitable distribution of a scarce commodity while keeping the price fixed. In practice, neither goal can be achieved. The price of gasoline is going to go up, rationing or no rationing. Disenchantment with the equity of any artificial system will follow quickly on its actual imposition. Worse yet, rationing does nothing to relieve the shortage. It only converts a temporary crisis into a chronic problem.

Mr. Symms. I should like to commend the gentleman from Illinois for taking this time before the House today to bring attention of many Members, as well as to many other people in the country, the compoundment of solving the energy problem the Government is causing. I think that what the gentleman is talking about is allowing the invisible hand of the market, that Adam Smith so often talked about, to work, and which worked so well in the marketplace, instead of using force and coercion to solve problems of allocation of petroleum resources. There are only two ways to allocate these resources in this world, and we have found in our country that the volunteer system is the best way.

The other way, of course, being that of force—or political power—which ultimately comes from the barrel of a gun.

I think it is a typical example for us to intervene as a Government into trying to solve an economic problem by using a political solution to it, where we are only going to take massive amounts of the taxpayers' money and further compound the problem.

The gentleman cited the example of the gas stations in Washington, D.C. In my neighboring State of Oregon they are out of gas in Portland. The reason for this is that we have a bunch of young bureaucrats with no experience in the petroleum industry trying to do what the experience of highly trained technical people working for oil companies have been trying to do for years.

It seems strange to me that in America we have such a wonderful system and yet we work so hard to make socialism work, instead of letting free enterprise work, we could solve the problem.

Another example is where we have shortages in the petroleum industry now created by the Cost of Living Council and, as the gentleman so well pointed out, the regulation of the price of natural gas.

As the gentleman pointed out, the regulation of the price of natural gas is just the beginning. I represent a district that does a lot of mining and we are going to be involved in the mineral shortage a few years from now, with our present attitudes, that will make the present fuel shortage look like a Mother Goose rhyme. I think besides inflation, price controls are the most urgent problem facing the country today, and they must be abolished.

I do not think the gentleman has mentioned it so far, and maybe it is his intention to mention it, but we have massive amounts of low-sulfur coal in Montana and Wyoming. Recently the other body passed a strip mining bill which includes the so-called Mansfield amendment which prohibits strip mining of coal on public lands. This is about 37 percent of the coal reserves in the United States, enough to run the world economy for the next 200 or 300 years. Of course, we have enough reserves in the whole country to run the world for approximately 600 years. They would be locking up the supply which could help solve the world crisis.

Again I associate myself with the remarks made by the gentleman from Illinois (Mr. Crane).

Mr. Speaker, serious proposals for the rationing of gasoline are now being considered. [Sec. 104.] The World War II experience, however, clearly showed that there are great difficulties and inequities inherent in any rationing system.

First of all, the country has changed in many important ways since the Second World War. There are now nearly three times as many automobiles in the United States today as there were in 1940. In addition, today's cars have grown steadily bigger and less efficient and generally get to 30 to 40 percent less fuel mileage to the gallon. Perhaps even more important, the whole pattern of life has changed greatly; a majority of Americans now live in suburbs many of which are miles from public transportation, shops, or jobs. Whole new industries from resorts to roadside inns have grown up which depend for their survival on the automobile.

The chief argument used in favor of rationing is that it is the fairest method of allocating a scarce resource. Of course, all resources except air are limited and, therefore, scarce. We still allocate most resources in this country by the price mechanism; the burden of proof should be on the proponents of rationing to prove that gasoline is somehow different from beef or TV sets or education. Fairness is generally defined as treating everyone equally. The trouble is, everyone is simply not equal and to treat different people alike is, therefore, unfair. It would be absurd in a food shortage to give equal amounts of food to heavy working men and to small children; it would seem equally absurd to allocate everyone the same amount of gasoline.

Most proponents of gasoline realize the difficulty in insuring fairness and therefore are willing to allow unused gasoline coupons to be legally sold—they would be sold in any case through a black market. This would be an improvement since it would allow more options and greater individual choice and it may well be the least of evils that we

will have to settle for. However, if this is done, new difficulties will arise.

A vast and swollen bureaucracy will be necessary to preside over so complex a rationing system as is envisioned by the Federal Energy Office.

Our aim should be to have as simple and economical a system of allocation as possible. The free market, of course, requires the least Government expenditure. The principle objection to the free market, is that the poor will be forced to bear a heavy burden in higher gasoline prices which fall harder on them than on the affluent.

According to the research center of the University of Michigan, 20 percent of the population is below their definition of the poverty level. Of this group only 15 percent have jobs which require them to drive more than 10 miles a day. This means that only 3 percent of the working population are likely to be hurt by rising gasoline prices.

Instead of placing the entire Nation in a Federal straitjacket with coupons, distribution centers, coupon trading centers, and forms upon forms to be filled out by all of us why not simply concentrate our efforts on alleviating the hardship which might be caused to the needy by the present shortage?

The contingency plan of the Federal Energy Office does have some redeeming points. Their plan for a "white" market in salable coupons, as I have noted, is an improvement. They also have taken into account the different needs of people living in rural areas; they realize that farmers need more gasoline than city dwellers with ready access to public transportation.

The plan would be greatly improved, in my view, if the Federal Energy Office kept its eye on the ball and aimed directly at helping that small part of our population who will be hurt by rising gasoline prices—without imposing a vast bureaucracy on the rest of us, limiting our freedom of choice and prolonging the crisis.

We must face the unpleasant fact that in the real world we must often choose between the lesser of two undesirable alternatives. No one wants to fight, but sometimes we must to avoid worse evils. In exactly the same way, we must realize we have to choose between higher prices for the gasoline we need and lower prices but less gasoline. I am convinced that most people when they think about it would rather pay a little more for their gasoline and be able to obtain it without waiting in long lines for hours or paying black-market prices for coupons, and breaking the law. The time of our constituents is, after all, worth money to almost all of them.

Once we face this fact in a mature way we can then proceed to tackle the problem of our few less fortunate citizens who will have a difficult time paying higher prices.

Mr. CRANE. Mr. Speaker, I thank the gentleman for his remarks, particularly those dealing with the problems inevitably associated with Government involvement in market decisions.

One of the main bones of contention in the energy emergency bill, both last December and now, is the section intended to prohibit windfall profits by the oil companies. **[Sec. 110.]** I am intrigued by the lack of faith shown by the proponents of the bill. The clear implication of their insistence on this provision is that, despite rationing, allocation,

and Government price fixing, the oil companies will still manage to turn a pretty profit. If that is so, how come the union pension funds are not rushing to buy oil stocks at the bargain prices for which many are now selling? The zealots point out that oil company profits rose markedly last year. They fail to point out, however, that those increases barely brought the earnings of the oil industry up to the average for all manufacturing in this country.

I do not intend to take up the cudgels for the oil industry. Many of the policies adopted in the past have worked to their benefit, and I have no doubt that they used the tools provided within our democratic system to get those policies adopted. But this is precisely what they should be expected to do. It is the responsibility of corporate management to maximize the long-range return on the investment made by their stockholders, within the laws and regulations laid down by the Government.

As I have pointed out several times, those laws and policies are ultimately the product of the deliberations of the Congress. If they have proved to be shortsighted or ineffective, it only reflects our failure to work out the consequences of our actions. I sincerely hope that we shall not be guilty of another such failure in our action on the energy emergency bill.

Mr. Speaker, I have spoken to only one aspect of the energy emergency bill, the proven effect of Government interference in the workings of the economic system. There are many other issues raised by this bill, many of fundamental importance. I hope that my colleagues will speak to them. I cannot conclude, however, without raising one of them myself.

There has been considerable concern in recent years, both in this Chamber and the one at the other end of the Capitol, with the curious inversion of the roles of the Congress and the President from those which the framers of the Constitution clearly intended. I share that concern. Some of the provisions of the energy emergency bill complete that inversion, providing the President with the authority to make law and reserving only a veto power to the Congress. **[Sec. 105.]** I find it difficult to understand how some people can advocate passage of such a bill and still wave the banner of constitutional crisis. Perhaps consistency is the hobgoblin of small minds. I hope that we are not expected to take hypocrisy as a mark of genius.

Mr. ASHBROOK. Mr. Speaker, there is some irony in President Nixon's bid for emergency powers to deal with the energy crisis. It is a classic case of Government intervention as a means of curing previous mistakes of Government.

Government regulations and Federal bungling have played a major role in creating our present energy shortage. Since 1955, for example, the Federal Power Commission has regulated the price of natural gas at the wellhead. The artificially low price discouraged exploration while encouraging consumption. Many industries converted from coal to "cheap" natural gas. The result is that demand has far outstripped supply. Paul MacAvoy of the Massachusetts Institute of Technology has estimated that without these controls new reserve findings would have been 40 percent higher. In summary, Government intervention distorted the market and, at the same time, discouraged attempts to increase supplies and to use other more plentiful fuels.

The impact of Government regulation of natural gas also contributed to the demise of the coal industry. The artificially low price of natural gas made it more economical to use than coal. Therefore coal was increasingly driven out as a source of energy. According to a report by Chase Manhattan Bank:

> The coal industry was dealt [a] devastating blow by the rapidly expanding invasion of its—markets by exceedingly low-priced natural gas—Unable to compete in terms of price, the coal industry experienced a large-scale loss of markets.

The use of coal has also been seriously reduced through arbitrary restrictions of the Clean Air Act of 1970. This act and other Government regulations have decreased industrial use of the one resource that the United States has a 200- to 400-year supply—coal.

The lesson to be learned from this is that Government actions and regulations should not be confused with solutions to our problems. Sometimes Government intervention does solve problems, but often it only makes them worse.

Mr. GOLDWATER. Mr. Speaker. I want to commend the distinguished gentleman from Illinois for taking this special order. The thrust of his remarks is very timely, and is aimed at the real problem underlying the energy crisis; namely, the attitude on the part of many that the Government alone can get us out of this mess. I submit that the Government through overregulation and lack of planning got us into this fix in the first place.

Thus far, the overwhelming direction of bills in the Congress as well as Government pronouncements is that more regulation and more Federal expenditures will solve the energy problem. This is faulty thinking at best. It is the type of thinking that invariably leads to public acceptance of mandatory rationing.

Some public opinion polls indicate that a majority of Americans seem to favor rationing. Of course, I recall that prior to the imposition of the Economic Stabilization Act, the public also appeared to favor mandatory wage and price controls.

It did not take very long for the American people to tire of these artificial restraints on the free enterprise system. I can safely predict total opposition also to mandatory rationing within 6 months after such a screwball scheme is placed into effect, which hopefully will never occur.

The theory behind rationing is that demand for energy must be lowered and people cannot be expected to lower demand on a voluntary basis. But regardless of the rationale, we cannot expect people to accept this as a way of life, especially when they have no hope of energy supplies being increased. In reality, the supply question seems to be escaping everyone, including Congress.

Frankly, I think rationing would be a failure in this administration or any other administration that attempted to implement it. We tried it in World War II when the American public was prepared for extreme sacrifice, and it did not work very well. Then too, we must remember that the amount of automobiles in the country in the war years was about one-eighth of those on the road today.

As I pointed out in separate views on the emergency energy bill last month, the alternative to bureaucratic control over the supply of energy is very simple. It is a good alternative. It is a proven alternative

when the Federal Government does not interfere with it. It is the old fashioned free enterprise system. That is right, the very system that made us the greatest Nation on the face of the globe.

Mr. Speaker, we have huge reservoirs of energy resources, but they must be harnessed. The Government cannot possibly do this job without breaking the taxpayer. But the competitive marketplace can do the job if the Government will let it. In the case of refined petroleum the price should be allowed to find its level in the marketplace. In turn, the individual will discover that supply will be increased as a result of the profit motive, and as supply increases, prices should decline.

The tendency is to blame the oil companies. Some people even want to nationalize the oil companies. That is all we need to create economic disaster—nationalization of the oil companies. The Federal Government cannot even run a poverty program much less an industry as complicated as petroleum.

Just recently, the distinguished economist, John Winger, estimated that in order to meet the energy needs of this Nation for the period of 1970 to 1985, the energy production industry will have to achieve an average annual growth in net earnings of 18 percent. Such growth cannot be realized unless the marketplace is used as a gage to determine at what point supply catches up with demand. Sure the oil companies might show a profit, but the profit can be invested in more supply in addition to being returned to the Government in the form of corporate income taxes.

Free enterprise can do the job. Let us not abandon it after 200 years of proven worth. I thank the gentleman for yielding.

Mr. STEIGER of Arizona. Mr. Speaker, it is now popular in many circles to identify a "bad guy" who is responsible for any given problem. This is more convenient campaign fodder than an honest analysis of the real issues of the problem. Today there are those who have found the "bad guy" for all our energy problems—the oil companies. Over on the Senate side, we can hear Senators casually tossing out the sort of bald unsubstantiated accusations which would enrage the liberal media if this calamity were aimed at anyone else.

Some Senators have suddenly decided that the oil companies "have contrived" a crisis, and have "cheated the public." But this is only demogogic reaction. If these same Senators had heeded the prophets of the last 20 years—many of them spokesmen for the oil companies—they would today have to look for other campaign issues.

These conservatives were not Cassandras, warning of doom; they were far-sighted men who made recommendations to avert the crisis which now has arrived because the recommendations were ignored.

Take, for example, the case of Senator Malone of Nevada, a conservative authority on minerals, metals, and fuels. Senator Malone's Interior Subcommittee released a report in 1954 which warned of an impending energy crisis. The Malone report warned that the vital security of this Nation is in serious jeopardy:

> We are dependent for many of our essential raw materials on sources in far-off lands, many under the control of possibly fickle allies or timid neutrals, some veritably under the guns of our potential enemies. And what is perhaps a more devastating conclusion . . . is that none of this vulnerability need exist. Long-overdue corrective measures should be undertaken at once.

Senator Malone declared that the Western Hemisphere could become completely self-sufficient in fuels and strategic materials. Now critics are clamoring for the goal which Senator Malone had figured out 19 years ago—self-sufficiency.

Senator Malone recommended immediate U.S. Government appropriation of research and development funds, and immediate encouragement to U.S. industry to "erect a large-scale oil-shale plant—to advance the production of petroleum fuel on a commercial basis." He urged "research and studies on the low-temperature carbonization of coal—and ways and means to revive the coal industry." Senator Malone also urged large-scale production of uranium "for tremendous development of nuclear power for industry and civilian use." He demanded immediate "improvement of our petroleum, gas and coal resources to assure maximum availability of domestic fuels for both the peacetime economy and national security."

How did the liberals react? Time magazine called this prophet of our present crisis the worst Senator in the Senate.

Another case in point: In September 1960, Michel Halbouty said to the American Association of Petroleum Geologists in Los Angeles:

> I can safely predict that between now and 1975 we will have an energy crisis in this country. Then the people will say the industry is to blame, why weren't we told? Well, I'm telling them now.

But America has ignored all such counsel stretching back as far as 1947. In that year, a detailed forecast of the overall energy fuel situation was prepared by the Senate Interior Committee in support of appropriation requests under the Liquid Synthetic Fuel Act of 1944. The long-range projections proved to be remarkably accurate through 1972 although they had been extended for a period of 53 years.

The energy crisis did not suddenly spring on us. A host of wise men saw it coming. To be privy to these public announcements, all of today's critics needed only to have read and listened. But conspiracy theories seem to make more interesting politics than the truth.

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